

1991

Daniel B. McCorvey v. State of Utah, Department of Transportation, and LeGrand Johnson Construction Company, a Utah Corporation : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

DANIEL B. McCORVEY,

Plaintiff and
Appellant/Cross-Appellee

vs.

STATE OF UTAH, DEPARTMENT
OF TRANSPORTATION, and
LEGRAND JOHNSON CONSTRUCTION,
COMPANY, a Utah corporation,

Defendants and
Appellee/Cross-Appellant

#2

UTAH SUPREME COURT
BRIEF.

UTAH
DOCUMENT
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DOCKET NO. 910054

Case No. 910054

Priority No. 16

ADDENDUM TO OPENING BRIEF OF APPELLANT/CROSS-APPELLEE, DANIEL B. McCORVEY

APPEAL FROM ORDERS AND A JUDGMENT ENTERED IN THE
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,
STATE OF UTAH, THE HONORABLE MICHAEL R. MURPHY

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FILED

MAY 18 1992

CLERK SUPREME COURT

Table of Contents

TABLE OF CONTENTS

	<u>Section</u>
Determinative Statutes and Constitutional Provisions	1
Utah Code Ann. § 63-30-34	
Utah Constitution Art. I, § 7	
Utah Constitution Art. I, § 10	
Utah Constitution Art. I, § 11	
Utah Constitution Art. I, § 24	
Special Verdict	2
Judgment	3
Summary Decision	4
Standard Specifications for Road and Bridge Construction, § 107.14	5
Special Provisions to Contract, Plf's Ex. 8	6
Griffin Memorandum, Plf's Ex. 11	7
Peterson Diary, Plf's Ex. 34	8
Photograph of Gravel, Plf's Ex. 3k	9
Bartow Letter, Plf's Ex. 30	10
Webster Photograph of Accident Scene, Plf's Ex. 3s	11
Wright Letter, Plf's Ex. 41	12
UDOT Sign Chart, Def's Ex. 115	13
UDOT Sign Chart Corrected by Witnesses, Plf's Ex. 17	14
Webster Photograph of Do Not Pass Sign Leaning Against Delineator Post, Plf's Ex. 3e	15

Webster Photograph of Roadway Where McCorvey Entered Median, Plf's Ex. 3m	16
Lawyer P. K. Peterson Photograph of Roadway Where McCorvey Entered Median After Brooming, Plf's Ex. 54	17
Webster Photograph Taken At Mile Post 136 Showing No Do Not Pass Signs, Plf's Ex. 3f	18
Lawyer P. K. Peterson Photographs Taken At Mile Post 135 With Do Not Pass Signs Erected, Plf's Ex. 57	19
Defective UDOT Traffic Control Plan, Plf's Ex. 10	20
MUTCD Traffic Control Plan, Plf's Ex. 39	21
Webster Photograph Showing Gravel and Debris Thrown By Vehicles In Outside Lane Near Where McCorvey Lost Control Of Honda, Plf's Ex. 3cc	22
Digest of Trial Transcript	23
Jury Instruction No. 33 - Sudden Peril -	24
Certificate of Service	25

Tab 1

1. Utah Code Ann. § 63-30-34.

(1) Except as provided in Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$250,000 for one person in any one occurrence, or \$500,000 for two or more persons in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the injury is characterized as governmental.

(2) Except as provided in Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$100,000 in any one occurrence, the court shall reduce the judgment to that amount, regardless of whether or not the function giving rise to the damage is characterized as governmental.

(3) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property without just compensation.

Utah Code Ann. § 63-30-34.

2. Article I, Section 7.

No person shall be deprived of life, liberty or property without due process of law.

Utah Const., Art. I, § 7.

3. Article I, Section 10.

In capital cases the right of trial by jury shall remain inviolate. In courts of general jurisdiction, except in capital cases, a jury shall consist of eight jurors. In courts of inferior jurisdiction a jury shall consist of four jurors. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.

Utah Const., Art. I, § 10.

4. Article I, Section 11.

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this state, by himself or counsel, any civil cause to which he is a party.

Utah Const., Art. I, § 11.

5. Article I, Section 24.

All laws of general nature shall have uniform operation.

Utah Const., Art. I, § 24.

Tab 2

NOV 21 1990

By M. J. Burke SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

DANIEL B. MCCORVEY,
Plaintiff,

vs.

STATE OF UTAH, DEPARTMENT OF
TRANSPORTATION and LeGRAND
JOHNSON CONSTRUCTION COMPANY,
a Utah corporation,
Defendants.

SPECIAL VERDICT

Civil No. C88-1818

Honorable Michael R. Murphy

LADIES AND GENTLEMEN OF THE JURY:

Please answer the following questions:

I.

(A) Was LeGrand Johnson Construction Company negligent
in one or more of the particulars claimed by the plaintiff?

ANSWER: Yes X No

(B) If I(A) is "yes", was such negligence a proximate
cause of the accident?

ANSWER: Yes X No

II.

(A) Was the State of Utah negligent in one or more of the particulars claimed by the plaintiff?

ANSWER: Yes X No

(B) If II(A) is "yes", was such negligence a proximate cause of the accident?

ANSWER: Yes X No

III.

(A) Was Daniel McCorvey negligent in one or more of the particulars claimed by the defendants?

ANSWER: Yes X No

(B) If III(A) is "yes", was such negligence a proximate cause of the accident?

ANSWER: Yes X No

IV.

(A) Was Wayne Wright negligent in one or more of the particulars claimed by the defendants?

ANSWER: Yes X No

(B) If IV(A) is "yes", was such negligence a proximate cause of the accident?

ANSWER: Yes X No

V.

Considering only the instructions and evidence concerning damages, and without being concerned with the effect or fault of any party on damages in answering this question, state what amount of money will fairly and adequately compensate the plaintiff for any and all damages, if any he has sustained as a result of the accident in question.

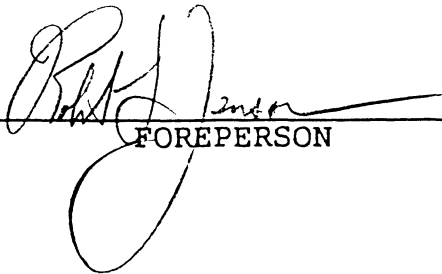
(A) General Damages	\$ <u>1,500.000</u>
(B) Special Damages	\$ <u>3,921,282</u>
TOTAL	\$ <u>5,421,282</u>

VI.

Considering all the fault of the plaintiff, defendants and Wayne Wright, if any, that you have found to be a cause of plaintiff's damages to total 100 percent, now allocate the 100 percent fault between those you found at fault. You will weigh the fault of one against the fault of the others and determine the relative fault of each in relation to the fault of the others. Your answer in percentages will reflect your decision. What part of the 100% do you find attributable to:

(A) LeGrand Johnson Construction Co.	<u>50</u>	%
(B) State of Utah	<u>28</u>	%
(C) Daniel McCorvey	<u>10</u>	%
(D) Wayne Wright	<u>12</u>	%
TOTAL		100%

DATED this 21 day of November, 1990.



FOREPERSON

Tab 3

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

DEC 7 1990

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JESSE C. TRENTADUE, Esq. 4961
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SUITTER AXLAND ARMSTRONG & HANSON
Attorneys for Plaintiff McCorvey
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101-1480
Telephone: (801) 532-7300

SALT LAKE COUNTY
By W. Ashmead Bell
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

VAUN PAUL PAGE,
Plaintiff,

vs.

DANIEL B. MCCORVEY; STATE OF
OF UTAH; LeGRAND JOHNSON
CONSTRUCTION COMPANY, a Utah
corporation; and P. WAYNE
WRIGHT,

Defendants.

DANIEL B. MCCORVEY,
Plaintiff,

vs.

STATE OF UTAH, DEPARTMENT OF
TRANSPORTATION and LeGRAND
JOHNSON CONSTRUCTION COMPANY,
a Utah corporation,

Defendants.

JUDGMENT ON THE VERDICT

2161658
12-10-90-8:32am

Civil No. C87-4304

Civil No. C88-1818

Judge Michael R. Murphy

LeGRAND JOHNSON CONSTRUCTION)
COMPANY, a Utah corporation,)
)
Third-Party)
Plaintiff,)
)
vs.)
)
P. WAYNE WRIGHT, individually,)
)
Third-Party)
Defendant.)
)

This case came on for trial before the Honorable Michael R. Murphy, District Judge of the Third Judicial District for the District of Utah, and an eight-person jury on November 7, 1990 and continuing through November 21, 1990. Plaintiff was represented by David R. Olsen and Jesse C. Trentadue of Suitter Axland Armstrong & Hanson; defendant LeGrand Johnson Construction Company was represented by Raymond M. Berry and John R. Lund of Snow, Christensen & Martineau; and defendant Department of Transportation, State of Utah was represented by Edward O. Ogilvie, Assistant Attorney General.

The jury returned the Special Verdict on November 21, 1990 with the following answers:

1. Was LeGrand Johnson Construction Company negligent in one or more of the particulars claimed by the plaintiff?

Answer: Yes.

2. Was such negligence a proximate cause of the accident?

Answer: Yes.

3. Was the State of Utah negligent in one or more of the particulars claimed by the plaintiff?

Answer: Yes.

4. Was such negligence a proximate cause of the accident?

Answer: Yes.

5. Was Daniel McCorvey negligent in one or more of the particulars claimed by the defendants?

Answer: Yes.

6. Was such negligence a proximate cause of the accident?

Answer: Yes.

7. Was Wayne Wright negligent in one or more particulars claimed by the defendants?

Answer: Yes.

8. Was such negligence a proximate cause of the accident?

Answer: Yes.

9. Considering all the fault of the plaintiff, defendants and Wayne Wright, if any, that you have found to be a cause of plaintiff's damages to total 100 percent, now allocate the 100 percent fault between those you found at fault. You will weigh the fault of one against the fault of the others and determine the relative fault of each in relation to the fault of the others. Your answers and percentages will reflect your decision. What part of the 100% do you find attributable to:

(A) LeGrand Johnson Construction Company?

Answer: 50%

(B) State of Utah?

Answer: 28%

(C) Daniel McCorvey?

Answer: 10%

(D) Wayne Wright?

Answer: 12%

10. Concerning only the instructions and evidence concerning damages, and without being concerned with the effect or fault of any party on damages in answering this question, state what amount of money will fairly and adequately compensate the plaintiff for any and all damages, if any, he has sustained as a result of the accident in question:

(A) General Damages

Answer: \$1,500,000.00

(B) Special Damages

Answer: \$3,921.282.00

TOTAL: \$5,421,282.00

The Special Verdict was executed by Robert L. Jenson, foreperson, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

Pursuant to the foregoing jury verdict and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that judgment be in the same is hereby entered against defendants as follows:

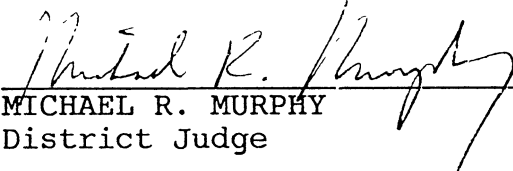
1. Judgment is hereby granted in favor of plaintiff, Daniel B. McCorvey, and against LeGrand Johnson Construction Company in the amount of \$2,710,641.00.

2. Judgment is hereby granted in favor of plaintiff and against the State of Utah in the amount of \$250,000.00.


3. Plaintiff is awarded his costs of court in the amount of \$_____.

4. Interest on the judgment shall accrue at the rate of 12% per annum from the date of entry until paid in full. No interest shall accrue on that portion of the verdict which is interest on the prior medical expense which sum is \$28,136.16.

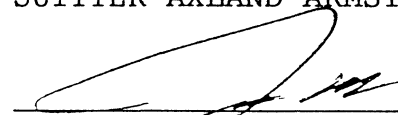
DATED this 7th day of December, 1990.


MICHAEL R. MURPHY
District Judge

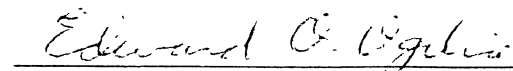
APPROVED AS TO FORM:



DAVID R. OLSEN, ESQ.
JESSE C. TRENTADUE, ESQ.
of and for
SUITTER AXLAND ARMSTRONG & HANSON



RAYMOND M. BERRY, ESQ.
JOHN R. LUND, ESQ.
of and for
SNOW, CHRISTENSEN & MARTINEAU



EDWARD O. OGILVIE, ESQ.
of and for
STATE OF UTAH, DEPARTMENT OF
TRANSPORTATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of November, 1990,
I caused true and correct copies of the above and foregoing to be
mailed, postage prepaid, to the following:

Edward O. Ogilvie, Esq.
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114

Raymond M. Berry, Esq.
Snow, Christensen & Martineau
10 Exchange Place
Salt Lake City, UT 84111

DR015.16

Tab 4

FILED DISTRICT COURT
Third Judicial District

DEC 10 1990

SALT LAKE COUNTY
By Ally W. Lang
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

VAUN PAUL PAGE,	:	SUMMARY DECISION
Plaintiff,	:	CASE NO. C-87-4304
vs.	:	
DANIEL B. MCCORVEY; STATE OF	:	
UTAH; LEGRAND JOHNSON CON-	:	
STRUCTION COMPANY, a Utah	:	
corporation; and P. WAYNE	:	
WRIGHT,	:	
Defendants.	:	

DANIEL B. MCCORVEY,	:
Plaintiff,	:
vs.	:
STATE OF UTAH, DEPARTMENT OF	:
TRANSPORTATION and LEGRAND	:
JOHNSON CONSTRUCTION COMPANY,	:
a Utah corporation,	:
Defendants.	:

Plaintiff has submitted a form of judgment and the defendants have objected to the form. A hearing was conducted on the objection and the court resolved on the record all issues relating to interest. The court, however, took under advisement the question of the applicability of the statutory

cap of \$250,000 on damage judgments against the State of Utah.

On the evening of November 21, 1990, the jury returned a verdict for the plaintiff of \$5,421,282 and found that the relative fault of the State was 28% of the total. Under normal circumstances, the State would thereby be liable for just over \$1.5 million of the total verdict. The State, however, asserts that Section 63-30-34(1), Utah Code Ann., applies and maximizes its liability at \$250,000.00. Plaintiff contends that the Supreme Court's ruling in Condemarin v. University Hospital, 775 P2d 348 (Utah 1989) renders the statutory cap unconstitutional as it applies to this case. This court, then, must determine the applicability of the Condemarin case to the verdict in the instant case.

There were three opinions in Condemarin which held the statutory cap unconstitutional. The lead opinion of Justice Durham expressly limited the applicability of the result. Justice Durham stated:

[T]he holding of the Court is limited to the following: the recovery limits statutes are unconstitutional as applied to the University Hospital. 775 P2d at 366.

Three of the four separate opinions in Condemarin expressly acknowledged that the common law at the time of the Utah Constitution incorporated the principle of sovereign immunity. 775 P2d at 349, 351, 370-71, 383. Two of the three opinions of the majority, however, focused on the proposition that only governmental functions, as distinguished from proprietary functions, were immune. 775 P2d at 351-52, 370-71. It would appear, then, that the majority viewed the opportunity for recovery by a person injured by the government in the exercise of proprietary or nonessential government functions as a fundamental right. It furthermore appears that the majority perceived the government activities before it, the operation of University Hospital, as nonessential government services and thus treated the plaintiff's right to recover as a substantial or fundamental right. 775 P2d at 351-52, 370-71.

Because the majority was so focused on limiting its ruling to the activities of University Hospital, it is necessary for this court to determine whether the plaintiff's right to recover against the government is a fundamental right. Correspondingly, it is necessary for this court to determine whether the State's activities in this case were essential governmental functions or what have traditionally been labeled proprietary functions.

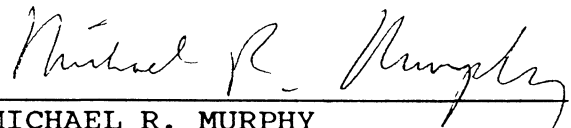
The activities challenged in the instant case, road maintenance, are ones which have been traditionally immune as essential governmental functions. See Richards v. Leavitt, 716 P2d 276 (Utah 1985) and cases cited therein. The government is thus liable for damages in connection with its road maintenance activities only if the government waives immunity. As a consequence, the right of the plaintiff in this case to recover against the government, as distinguished from the right of the plaintiff in Condemarin, is not a fundamental right. The constitutional analysis of Condemarin is therefore inapplicable. Not only is the constitutional analysis in Condemarin inapplicable, two of the opinions of the majority suggest that, in a case such as this involving the performance of governmental functions, there is no right to unlimited recovery. 775 P2d at 352, 371-72.

This court, then, is left with an indication that the statutory cap is applicable to this plaintiff's recovery against the government in its performance of essential governmental functions. Plaintiff's contentions must also be considered in light of the presumptive constitutionality of the challenged statute and the need to resolve any doubt in

favor of constitutionality. Timpanogos Planning & Water Management Agency v. Central Utah Water Conservancy Dist., 690 P2d 562, 564 (Utah 1984); Dague v. Piper Aircraft Corp., 275 Ind. 520, 530, 418 N.E. 2d 207, 213-14 (1981).

For the foregoing reasons, the provisions of Section 63-30-34(1), Utah Code Ann., are applicable to the verdict and reduce the recovery against the State of Utah to \$250,000.00. The court reached this conclusion before the close of business on Friday, December 7, 1990 and signed and entered a judgment consistent with this decision.

Dated this 10th day of December, 1990.


MICHAEL R. MURPHY
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy
of the foregoing SUMMARY DECISION to the following,
this 10 day of December, 1990:

David R. Olsen, Esq.
Jesse C. Trentadue, Esq.
700 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101-1480

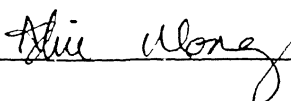
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10 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

Brent A. Gold, Esq.
312 Main Street
P.O. Box 1994
Park City, Utah 84060



Tab 5

STATE OF UTAH
**STANDARD
SPECIFICATIONS**

For
ROAD and BRIDGE
CONSTRUCTION



EDITION OF 1979

Published by
DEPARTMENT OF TRANSPORTATION
4501 South 2700 W.
Salt Lake City, Utah 84119

mance of work in forest areas. He shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with the requirements of the forest supervisor.

The Contractor shall take all reasonable precautions to prevent and suppress forest fires and shall require his employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

107.14 Responsibility for Damage Claims: The Contractor shall indemnify and save harmless the Department, its officers, and employees from all suits, actions, or claims of any character brought about because of any injuries or damage received or sustained by any person, persons, or property on account of the negligent operations of the said Contractor or on account of or in consequence of any neglect in safeguarding the work or through use of unacceptable materials in constructing the work or because of any act of omission, neglect, or misconduct of said Contractor or because of any claims or amounts recovered from any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the "Workmen's Compensation Act" or any other law, ordinance, order, or decree and so much of the money due the said Contractor under and by virtue of his contract as shall be considered necessary by the Department for such purpose, may be retained for the use of the Department or, in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Department, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance.

Before the contract is awarded, the Contractor with the successful bid shall be required to furnish to the Department a copy of the public liability and property damage insurance policy which is to be in force and applicable to the project. In

addition, the Contractor shall execute and file with the Department a sworn affidavit that the Contractor agrees to keep the policy in force for the duration of the contract.

107.15 Opening Sections of Project to Traffic: Opening of sections of the work to traffic prior to completion of the entire contract may be desirable from a traffic service standpoint, or may be necessary due to conditions inherent in the work, or by changes in the Contractor's work schedule, and may be necessary due to conditions or events unforeseen at the time of the contract. Such openings as may be necessary due to any of the foregoing conditions shall be made when so ordered by the Engineer. Under no condition, except as provided in Subsection 105.16 (a), shall such openings constitute acceptance of the work or a part thereof, or a waiver of any provisions of the contract.

On any section opened by order of the Engineer, whether covered in the Special Provisions or not, the Contractor shall not be required to assume any expense entailed in maintaining the road for traffic. Such expense shall be borne by the Department, or compensated for in a manner provided hereinafter in Subsection 109.04. On such portions of the project which are ordered by the Engineer to be opened for traffic, in the case of unforeseen necessity which is not the fault of the Contractor, compensation for additional expense, if any, to the Contractor and allowance of additional time, if any, for completion of any other items of work on the portions of the project ordered by the Engineer to be opened in the event of such unforeseen necessity, shall be as set forth in a change order mutually agreed on by the Engineer and the Contractor as set forth hereinafter.

If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may so notify him in writing and establish therein a reasonable period of time in which the work should be completed. If the Contractor is dilatory, or fails to make a reasonable effort toward completion in this period of time, the Engineer may then order all or a portion of the project opened to traffic. On such sections which are so ordered to be opened, the Contractor shall conduct the remainder of his construction operations so as to cause the least obstruction to traffic and shall not receive any added compensation due to the added cost of the work by reason of opening such section to traffic.

Tab 6

PENGAD-Beyonne, N. J.

PLAINTIFF'S
EXHIBIT

8

C-87-4304

87 0690

NAME Bituminous Seal on I-70 and I-15

PROJECT NO. NI-9999(1)

COUNTY Millard

CONTRACTOR LeGrand Johnson Construction Co.

BID OPENING June 17, 1986
Date

3/4/85
7134-2

SUPPLEMENTAL SPECIFICATION

Applicable Specifications and Corrections for Addendum No. 2

The State of Utah Standard Specifications for Road and Bridge Construction, Edition of 1979, and Addendum No. 2 of February 1, 1985, will apply on this project.

Corrections to Table of Contents of Addendum No. 2

SECTION 625 CONSTRUCTION SIGNS AND WARNING LIGHTS: Change the Subsection "625.11" to "625.01."

Corrections to Addendum No. 2

106.10 Buy America: Delete the word "Amerdican" and substitute the word "American" in the first sentence of the first paragraph.

107.25 Noise and Vibration Control: Add the following at the end of Article 2, paragraph a: "55 dBA in nighttime (9 p.m. - 7 a.m.)."

404.08 Basis of Payment: Delete the word "necessaary" and substitute the word "necessary" in the first sentence of the first paragraph.

506.12 Cold Weather Concreting: Delete the number "70" and substitute the number "60" in the first sentence of the second paragraph.

625.11 Signs: Correct this heading to read "625.01 Signs."

SUPPLEMENTAL SPECIFICATION

Examination of Plans, Specifications, Special Provisions
and Site of Work

Section 102 "Bidding Requirements and Conditions" of the State of Utah Standard Specifications for Road and Bridge Construction, Edition of 1979, and Addendum No. 2, shall apply with the following modifications:

102.05 Examination of Plans, Specifications, Special Provisions and Site of Work: Add the following paragraphs to the end of Subsection 102.05:

Prospective bidders are permitted to converse with State personnel who may have the knowledge of the project, plans, specifications, materials sites, or conditions generally prevailing in the area of the proposed work to aid in pre-bid investigations. Prospective bidders must conduct their own independent investigation, including a visit to the site of the work, and the Engineer is available to accompany the prospective bidder by appointment upon reasonable request.

The Department does not agree to be responsible for verbal statements or representations made by Department personnel during conversations or investigation nor for any assumptions or conclusions reached by a prospective bidder as a result of such verbal communication.

The Department may respond to written requests for interpretation or clarification of plans, specifications or special provisions if presented to the Engineer at least ten working days prior to scheduled bid opening. Responses shall be in writing and may be issued as official addendums to the plans, specifications or special provisions for the benefit of all prospective bidders or plan holders.

SPECIAL PROVISION

PROJECT NO. NI-9999(1)BITUMINOUS SEAL COAT

CONT.

405.08 Spreading and Compacting of Cover Material

Cover material shall be pre-dampened, by the Contractor, in the stockpile at least 24 hours in advance, but not more than 48 hours, prior to placing. The cover material shall be spread by means of an approved spreader having the ability to spread to 13.5 feet wide and can be adjusted to uniformly spread the required amount of aggregate. Provisions shall be made so that the larger particles will be deposited first. The rate of cover material application, in pounds per square yard, shall be determined by the Engineer. The contractor shall calibrate the spreader at the beginning of each day to insure the proper application rate. Immediately after spreading, the cover material shall be hand broomed, if necessary, to distribute the aggregate uniformly over the surface. After the cover material has been satisfactorily spread, the surface shall be rolled a minimum of two passes in a longitudinal direction.

Rolling shall be done with a minimum of two pneumatic tire rollers each weighing a minimum of 15 tons. Rolling shall be performed in manner and time so that the aggregate is properly imbedded into the binder before the binder starts to set. Surplus cover material shall be removed from the roadway, by brooming, as directed by the Engineer. The tire pressure for pneumatic rollers shall be between 40 psi and 70 psi.

405.09 Traffic Control

Flagging shall be performed by certified, property equipped flaggers. Pilot cars shall be operated in such a manner as to safely conduct traffic over the chip seal job. Pilot cars shall also be operated at speeds that will not damage freshly chip sealed surface. Flagging and car operations shall continue for as long as necessary to insure that uncontrolled traffic will not damage the days production. The Contractor will submit a traffic control plan, prior to doing the work, for approval by the Engineer. This traffic control plan shall comply with MUTCD requirements and shall also include provisions for flagging and pilot car operations.

The Contractor shall be required to furnish and place all required traffic control signing except that the Department will furnish to the Contractor; advisory speed signs, loose gravel signs, do not pass and pass with care signs. The Contractor shall be responsible to place these signs along with his regular traffic control signs. Because these signs may be required to control the traffic for a period of time beyond the Contractor's operation, the Department shall be responsible to retrieve state signs.

Weather and Seasonal Limitations

Seal Coat shall be applied only between May 15 and August 31 and when the air temperature in the shade and the roadbed temperature are above 75°F. Seal
for or other adverse weather

Tab 7

August 2, 1976

To: Curt Barry

From: Dick Criffin

Dick Criffin

Subject: I-15 Chip Job, MP-122 to MP-134

Legrand Johnson, Contractor

The contractor on the above project is using far too many chips. Out of a 100' length pile, I figure he has used 200' (200' on the East end and 100' on the West end).

One third of 3,000 tons is 1,000 tons of chips used: $1,000 \times 2,000 = 38.5 \text{ lbs/sqy}$

$$\frac{1000 \times 2000}{34 \times 5280 \times 26} = 38.5 \text{ #/sqyd} \qquad \frac{3.4 \times 5,280' \times 26'}{9}$$

The contract calls for using 23 pounds per square yard.

Signs on the North end of the project are misplaced. These signs should be immediately in advance of the chip placement. The signs are over two miles ahead of the placement of chips.

It is my observation that traffic did not slow down until they came upon the chips. They hit their brakes after they were on the chips causing the chips to turn over and carry the asphalt down the road.

I encourage the contractor to do one-half width all the way through. This will allow the traffic to use the unchipped lane, allowing the asphalt to harden and prevent broken windshields. I believe this will result in a much better product. The contractor is required to wet down his chips between 24 and 48 hours of chip-placement. See that this is done. ~~It appeared~~. It appeared to me the wetting was

Keep in touch with Alt Staples so that we can get any sanding required just as soon as it is needed.

Try cutting the asphalt coverage .05 gallon per square yard and see what effect this has on the product. Also watch the areas that have recently been lane-leveled. These areas may require even a bigger change in the asphalt coverage.

I will be in the office first thing in the morning. If there is anything you need, give me a call. I will try to get up on the project later in the day.

Tab 8

FRIDAY

31st Week

AUGUST 1 1986 • 152 Days Left

APPOINTMENTS & SCHEDULED EVENTS

NAME

PLACE

SUBJECT

8

8:00

9

9:00

10

10:00

11

11:00

12

12:00

1

13:00

2

14:00

3

15:00

4

16:00

5

17:00

213th Day • AUGUST 1 1986

FRIDAY

29

TIME RECORD, SERVICES PERFORMED, DIARY

FOR

RE

DESCRIPTION

TIME

Flagger 8 hrs

Flagger 8 1/2 hrs

TO BE DONE TODAY (NUMBER EACH ITEM)

EXPENSE & REIMBURSEMENT RECORD:

Where? Duration?

Purpose-Who What Involved?

To whom Paid?

Reimbursed? By whom?

Amount

STEVEN C. PETERSON

MONDAY 32nd Week

CRS-2A

AUGUST 4 1986 • 149 Days Left

APPOINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

7:00 6000

8:00 8500

9:00 8500

10:50 8500

TO BE DONE TODAY (NUMBER EACH ITEM)

12 1/2 8500

2. Flagger 7:30 to 7:00

2 EARLY WARNER 7:30 7:00

50 mile 26' wide
40 miles 13' wide

2 3 2 3880

70 980 3519

50 650 2980

52 020 2904

71 280 3596 7080

2/33 8160

EXPENSE & REIMBURSEMENT RECORD:

Item	Where?	When?	For what?	To whom Paid?	Reimbursed By whom?	Amount
13						
12						
11						
10						
9						
8						
7						
6						
5						
4						
3						
2						
1						

38 ton RE
1503

MONDAY

29

216th Day • AUGUST 4 1986

TIME RECORD, SERVICES PERFORMED, DIARY

FOR RE DESCRIPTION TIME

7:30 to 5:30

635 Ton Hauled
by Belly Dumps

STATE YARD

T-5129 24 LOADS
T-6085 24 LOADS
T-6074 25 LOADS
T-6093 24 LOADS

39 1/2

MONDAY CURTIS & Dick G.
WANTED me to change
our chipping plans

WE WERE GOING 2 DIST. LOADS
A THEN BACK-UP & FINISH
TWO MORE DIST. LOADS. FINISH
ING THE FULL WIDTH OF THE
LANE.

THEY WANTED US TO GO A
FULL DAY ON A 1/2 LANE. THEY
SAID THAT WAY THE CHIPS
MIGHT SAY ON BETTER. SO
THAT WAS OUR NEW PLAN.

FINISHED NORTH BOUND LANE RANCH FILL
TO BAKER CANYON.

FRIDAY 32nd Week

AUGUST 8 1986 • 145 Days Left

POINTMENTS & SCHEDULED EVENTS

NAME PLACE SUBJECT

1:30 TRUCK MATLACK

me in at 1:15

ONDAY ORDER

100 @ 7:00 Cove Fort

1000 @ 8:30 " "

O BE DONE TODAY (NUMBER EACH ITEM)

GER 2 @ 10 1/2

4 WARNERS 2 @ 10 1/2

4 WARNERS 1 @ 2 1/2

8.0 TONS

6749.75

KED TO CURTIS B

out HAULING SIGNS

READ OUT 50 THIN

PENSE & REIMBURSEMENT RECORD:

Where? Purpose Who To whom Reimbursed? Amount

SAID SEE IF WE

1 GET MORE LOOSE GRAV

FRIDAY

29

220th Day • AUGUST 8 1986

TIME RECORD, SERVICES PERFORMED, DIARY

FOR RE DESCRIPTION TIME

T-5129 14 LOADS
T-6085 15 "
T-6074 15 "
T-6093 15 " } 59 LOADS

CRS-2A 8500, 8500, 6000

10:30 TR. FROM MATLACK
showed up at 1:15 we had
The whole crew waiting

4 TR. DRIVERS 1 supl
2 Labors
4 operators
2 flaggers

TO DATE 2682.5

3647.75 ton

3657.75

STATE YARD 3223.7
Ranch Exit

3476.08

6749.00

650.00

7399.00

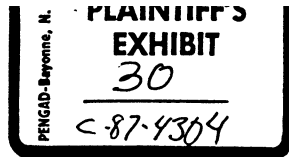
Tab 9

PENGAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT
3*

NOTE

Tab 10

8/6/86



Salt Lake City
4465 Century Drive, Salt Lake City, UT 84123
Phone: 1-801-268-2533, 1-801-268-2612

Rev. Dr. Charles H. Bartow
C/o Goetschius
117 So. Central Ave.
Ramsey, N.J. 07446

Utah Dept. of Transportation
Maintenance Division
4501 S 2700 W
Salt Lake City, Utah 84119

Gentlemen:

I was travelling north on interstate 15, one half to one hour south of Fillmore, when I came upon road repairs. A sign said, "gravel". I slowed up so as not to spray up gravel on my new car. I stayed in the right lane which was at least somewhat less filled with loose gravel. A few cars and pickup trucks passed me at 50-55 mph and sprayed the side of my car with gravel. It is now full of chips and scrapes. It seems to me irresponsible of road crews to leave an interstate highway in such shape! One lane should be closed for repairs until fully ready for service, then the next lane repaired. Traffic should be slowed into the single safe lane. This method...

other state.

By the way, the gravel-sprinkled surface extended for a number of miles.

Frankly, I am furious about the conditions which resulted in extensive damage to the paint on my just purchased car. To my mind the fault for damages must be laid at your door.

Please respond promptly.

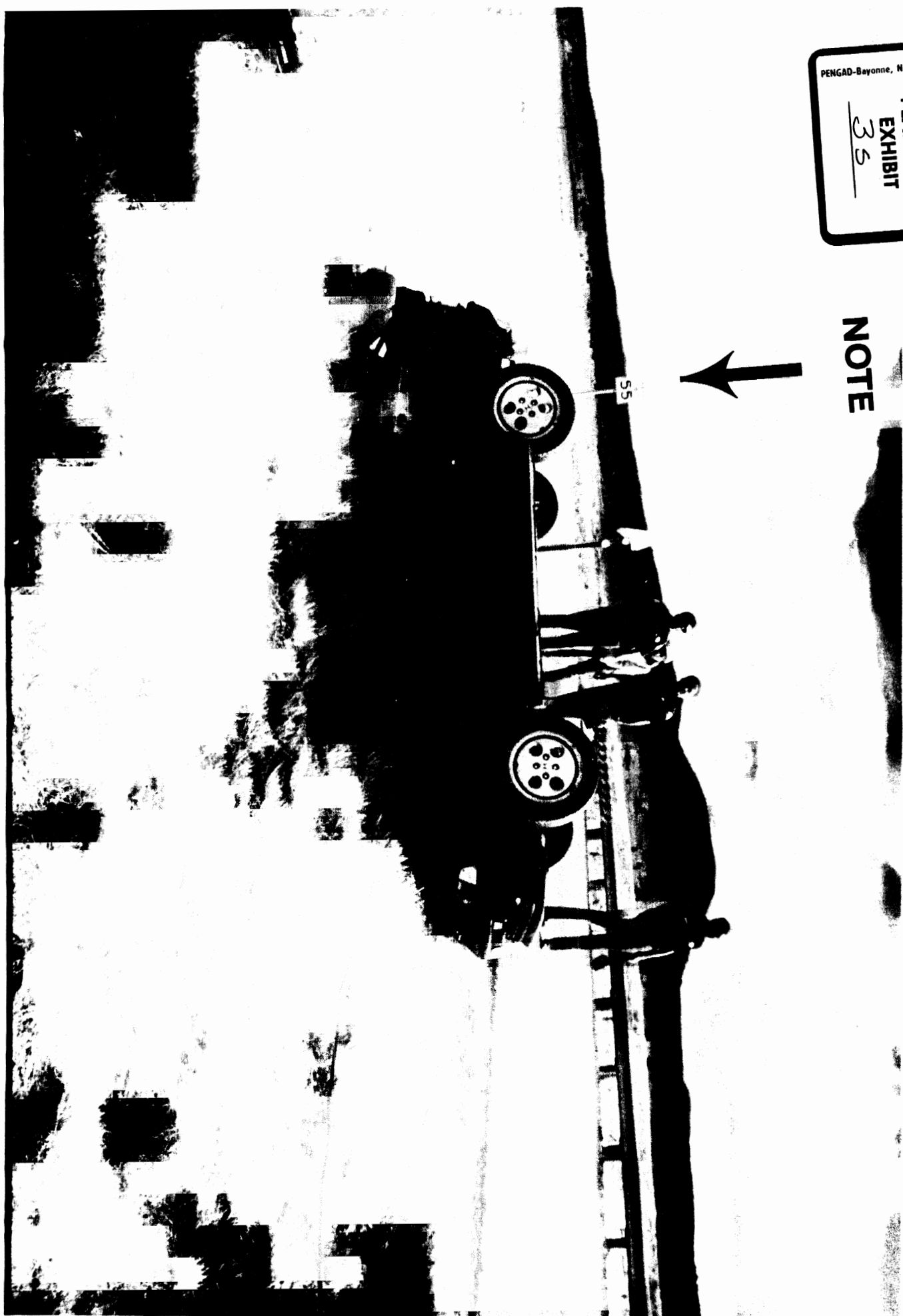
Thank you for your considerate response.

Charles F. Barton

Tab 11

PENGAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT
35

NOTE



Tab 12

ORION CONSTRUCTION COMPANY

4190 SOUTH REDWOOD ROAD
SALT LAKE CITY, UTAH 84123
PHONE 966-8577

8/3/87

Dear Sir;

This accident occurred almost one year ago, but I will try and remember all facts.

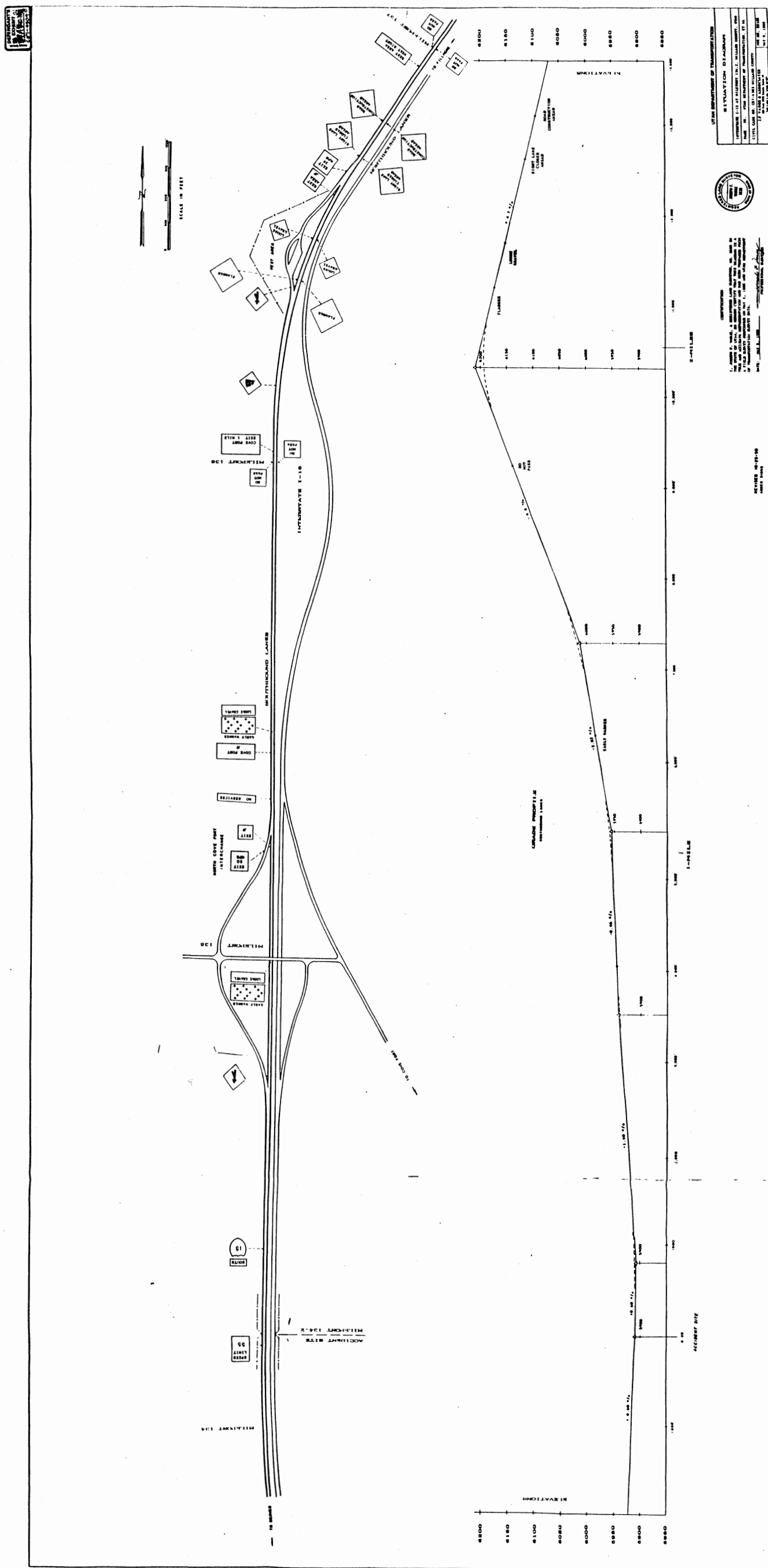
As we were coming up toward the crest of a hill I noticed construction signs on the right. The sign which I noticed besides "road construction" was one sign which said "flagman ahead". As we reached the top of the hill we moved into the right lane and as we began to go down the other side we noticed some gravel on the freeway. There were no other signs which I saw. There were definitely no flagmen or construction workers anywhere in sight and no const. machinery. It seems the car roll over occurred about 1/2 mile down the other side of the hill. Approx. 25 to 30 minutes after the accident a const. pick-up came upon the scene from the other direction. The man driving the pick-up asked me only one question. He wanted to know if

Effect that the car that rolled over
and possibly the other cars following were
going way too fast for the conditions.
When I refused he left me alone and
went to other people there. I then
followed him and asked why there were
no flagmen anywhere along the strip.
He said "Shut up and get out of
here buddy."

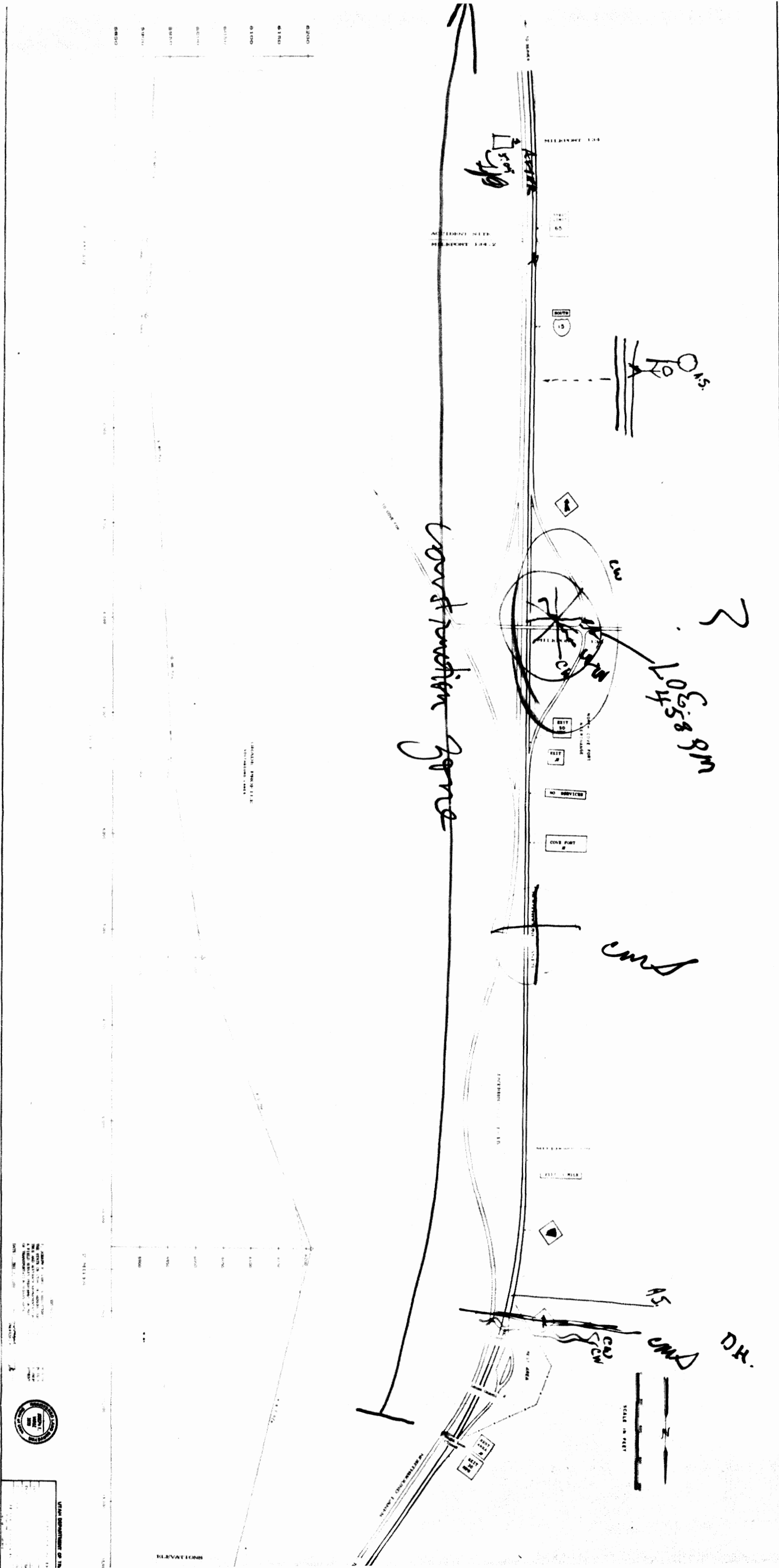
As we drove the rest of the
const. route we never saw another
const. sign and definitely no flagmen,
even though the same gravel conditions
continued for many more miles.

Wayne Wray

Tab 13



Tab 14



UTAH DEPARTMENT OF HIGHWAYS
DIVISION OF HIGHWAY CONSTRUCTION
DESIGN SECTION
PROJECT NO. 100-1000
SHEET NO. 100-1000
DATE: 10/1/50
BY: J. H. HARRIS
CHECKED: J. H. HARRIS
APPROVED: J. H. HARRIS



Tab 15

PENGAD-Bayonne, N. J.

PLAINTIFF'S
EXHIBIT
3e

NOTE

Tab 16

PENGAD-Bayonne, N. J.

PLAINTIFF'S
EXHIBIT

3 m



Tab 17

PLAINTIFF'S
EXHIBIT
54
7-4304



Tab 18

PENGAD-Bayonne, N. J.

PLAINTIFF'S
EXHIBIT

34

NOTE



Tab 19

PLAINTIFF'S
EXHIBIT
57
C87-4304

NOTE



DO
NOT
PASS

Tab 20

SIGNING
SEAL COAT OPERATIONS
N1-9999 (1)

Tab 21

NOTES:

NOTES:

1. Taper Formula

$L = S \times W$ for speeds of 45 or more

$L = \frac{WS^2}{60}$ for speeds of 40 or less

Where:

L = Minimum length of taper

S = Numerical value of posted speed limit prior to work or 85 percentile speed

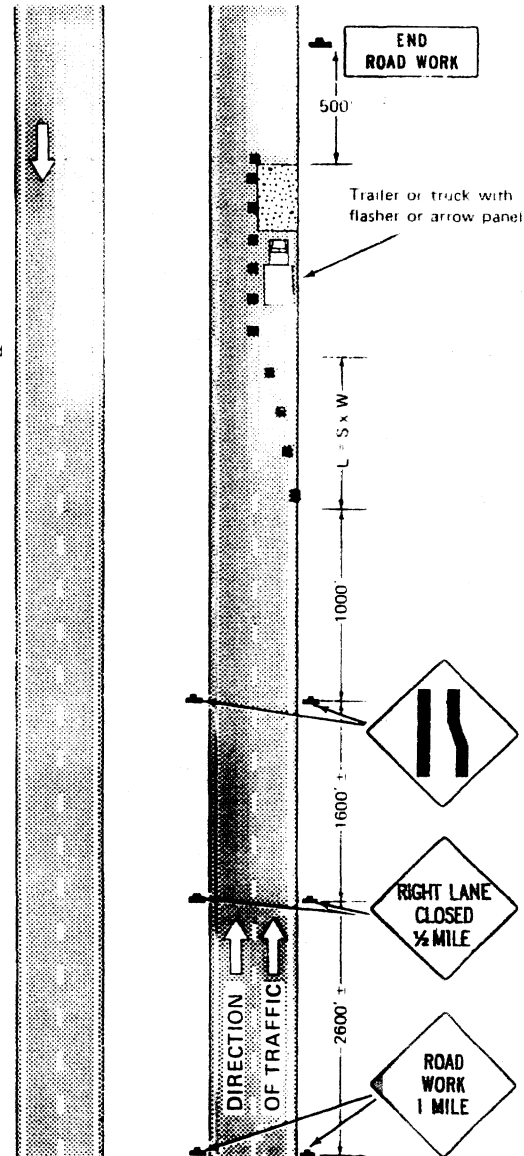
W = Width of offset

2. The maximum spacing between channelizing devices in a taper should be approximately equal in feet to the speed limit in miles per hour. Tangent sections spacing should be equal in feet to twice the posted speed limit in miles per hour.

6B-11

KEY:

■ ■ Channelizing devices



6B-11 Figure 6-9. Typical application -- daytime maintenance operations on a 4-lane divided roadway where half of roadway is closed.

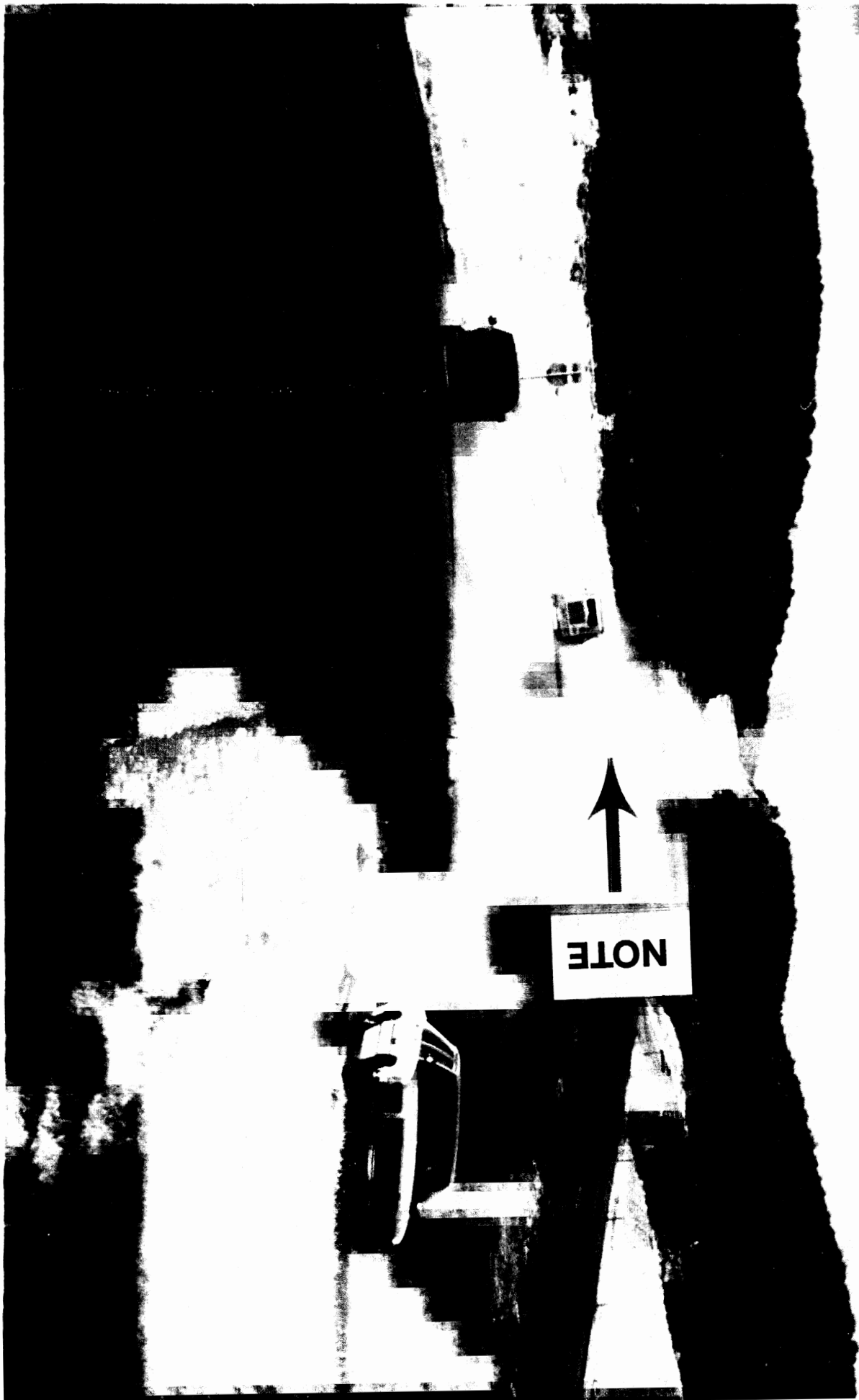
Tab 22

PENGAD-Bayonne, N. J.

PLAINTIFF'S
EXHIBIT

3cc

NOTE



Tab 23

TRIAL TRANSCRIPT SUMMARY
Daniel B. McCorvey, et al. v. State of Utah, et al.
Civil No. C87-4304

TRIAL TRANSCRIPT SUMMARY FOR NOVEMBER 7, 1990 (R. 3009)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
75-84	UDOT's Opening Statement	UDOT'S ATTORNEY BEGINS HIS OPENING STATEMENT
76		Indicates that the evidence will show that this accident had nothing to do with the road conditions, excessive chips, the signing plan, the Manual of Uniform Traffic Control Devices, or the numerous other allegations or representations that have been stated or will be stated in the course of this trial.
78	Only One 25 MPH Sign	Indicates there was only one advisory speed limit sign of 25 mph.
80	Accident Did Not Have To Happen But Did Because McCorvey Panicked Once He Left Road	Further indicates that when Mr. McCorvey left the road he was not in trouble. He went into what engineers refer to as a forgiving median which means the median was designed or configured such that if Mr. McCorvey had driven reasonably, slowed down and done the appropriate things under those circumstances, this accident did not have to happen.
84-98	LeGrand Johnson's Opening Statement	LEGRAND JOHNSON'S COUNSEL, BEGINS HIS OPENING STATEMENT.
94		Mr. Knight's expert testimony will show that even after Mr. McCorvey went off the road he could have maintained control if he had not tried to keep up his speed.
97	Accident Caused When McCorvey Tried To Return To Road After He Entered Median	The testimony of the other witnesses will clearly show that if there had not been a case of inappropriate driving there never would have been any vehicle off the road, and if Mr. McCorvey had not tried to get back up on the shoulder the way he did the accident never would have happened.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
99	No Drinking or Drugs	The COURT indicates to the jury that there is a stipulation from the defendants that there is no drinking or drugs at issue in this matter. The jury can accept that as a fact.
100		<u>DIRECT EXAMINATION OF C. DEWEY TAYLOR BY McCORVEY:</u> Taylor is 70 years old.
101		He is retired at this time but was an automobile mechanic and owned and operated a garage in Phoenix, Arizona. On August 7, 1986 Taylor was driving on I-15 near Cove Fort, Utah. He was traveling at approximately 58 mph.
102	Taylor Observed One 25 MPH Sign Only And It Was Miles North Of Accident Scene	Before Taylor got to Cove Fort he came into the project zone and observed a sign that said, "Construction ahead, speed 25 mph, no passing. Danger of windshield breakage." This sign was north of the hill before the rest area.
103	No Other Signs	Taylor saw no other signs.
	Lots of Chips In Both Lanes	The conditions of the road were dry with lots of chips on the surface. Both Lanes Taylor slowed to approximately 20 and 30 mph because his suburban does throw chips. There were heavy chips in both lanes. Taylor was in the righthand lane when he slowed down to 25 mph.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
104	Concerned About Broken Windshield And Damage To His Trailer Caused By Gravel	<p>At this point in time, three or four cars passed Taylor and all threw rocks which hit the side of the trailer and the side of the suburban. Taylor was concerned that they were going to get a broken windshield besides the fact that the rocks were messing up the side of the trailer.</p> <p>Taylor saw a van coming up behind him and he decided the van was going too fast and he was not going to let him by so he moved into the lefthand lane from the righthand lane. Taylor moved into the righthand lane because the van tried to get around him.</p>
105	Taylor's Windshield Broken By Van When It Hit Mound Of Gravel Left In Roadway	<p>Eventually the van came behind Taylor at a high rate of speed, approximately 60 mph, and Taylor was afraid that if he didn't move back over to the right and let him go by there might be an accident. As the man in the van moved in front of Taylor he ran across a high mound of gravel and broke Taylor's windshield.</p>
106		<p>Taylor states he has driven over two million miles all over the country and changed lanes to protect his vehicle and prevent a possible accident from happening.</p>
107	Road Hazardous On Day Of Accident And Lane Should Have Been Closed	<p>Taylor believes that road was hazardous on the day of the accident and felt that one lane should have been blocked. He feels if one lane had been blocked the other vehicles would not have been able to get around him.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Only One 25 MPH Sign Miles North Of Accident Scene	Again, Taylor indicates there was one sign indicating 25 mph north of the crest of the hill.
108	No Other Signs, And No Early Warner No Flagmen	Taylor indicates that the big flashing early warner arrow sign that appears at an underpass in a picture marked Exhibit 3e was not there at the time of the accident. There was not another flasher just up the road by the Cove Fort sign and there were no no flagmen on the road before the accident. There were no signs that said "flagmen ahead."
109	Wheelbarrow Full Of Gravel On Roadway At Accident Scene	Taylor would not agree with a statement given at the scene of the accident, you could not pick up a handful of gravel in ten square yards. He states with the amount of gravel at the accident site you could have picked up a wheelbarrow full.
<u>CROSS EXAMINATION OF C. DEWEY TAYLOR BY UDOT:</u>		
112	Road Hazardous. Should Have Been Someone There To Make Traffic Slow Down	Taylor knows that the road was hazardous and people should have been driving slower. But there was no one there to make them slow down.
113	Only One 25 MPH Sign	Taylor does remember there being one 25 mph sign but states he would not expect most people to adhere to that sign unless there were a single lane and they could not pass.
114	No Other Signs	Taylor states his inability to remember everything in the area does not mean that he may not be able to remember what signing was there. He did not see any. The signs were not there.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
115		<u>CROSS EXAMINATION OF C. DEWEY TAYLOR BY LEGRAND JOHNSON:</u>
117	No Right Lane Closed Or Flagman Signs	Taylor did not see a flagger sign indicating flagmen ahead because there was not a sign that said that. He does not recall seeing a sign that said right lane closed ahead.
	He Knows There Was No Early Warner In Right Lane Because Drove That Lane	Taylor believes he was in the right lane of traffic as he went over the top of the hill and remained in the right lane down to the scene of the accident. He did not see on the right side of the road an early warner sign with a flashing light on it.
118	Saw One 25 MPH Sign	Taylor only saw one sign that said, "Road construction, speed limit 25 mph, no passing. Danger, windshield breakage."
119	Driving More Than 25 MPH Unsafe	Taylor did recognize that the conditions of the road were such that driving more than 25 mph was unsafe.
120	Speed of Honda Was 50-60 MPH	Taylor believes the speed of the Honda when it was going down the hill with the van catching up to it was 50 to 60 mph.
123		COURT in evening recess at 5:10 p.m.

TRIAL TRANSCRIPT SUMMARY FOR NOVEMBER 8, 1990 (R. 3004)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
<u>DIRECT EXAMINATION OF EDWARD VILLARREAL BY McCORVEY:</u>		
		Villarreal's address is 853 North 100 East, American Fork.
4	Truck Driver	Villarreal has driven truck for a living for approximately 40 years. He was driving on I-15 near Cove Fort on August 7, 1986 in a Kenworth semi 45-foot trailer with a load of steel on it. He did come upon a construction area.
5	Saw Sign North Of Rest Area	He recalls seeing some kind of sign indicating "construction zone" and "slower" before the rest area.
6	Only Saw One Sign No Flagmen	He only remembers seeing that one sign. He saw no cones or flaggers to stop the traffic or to indicate to the drivers to slow down.
7	Honda Passed At 55 MPH Not Speeding	He recalls that prior to hitting the construction zone a small black car, which he later found out was the car with the two men in it, passed him. They were not speeding but rather going approximately 55 mph and appeared to be on vacation or something and waved at him as they went by. It was a friendly wave.
	Friendly Wave From Honda Passenger	
	Cars Began Passing On Right, Throwing Gravel	As they got into the construction zone he remembers people getting impatient and passing on the right and throwing rocks everywhere. The rocks seemed to be pretty heavy and awfully big.
8	Rocks Hit Villarreal's Truck	Rocks were hitting the truck. He even noticed that the left lane was not in the best condition for people to be on.
	Van Passed And Broke Villarreal's Windshield	Villarreal remembers a man in a van with a family passing him up around the rest area. He was throwing rocks at everyone from the right lane and broke Villarreal's window and also pitted the windshield.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
9	Angry Because No Traffic Control	Villarreal remembers being angry and wondering why there wasn't someone controlling the traffic.
10	Honda Caught By Van	Villarreal kept his eye on the van and recalls the small black car with the two men in it catching up to the van. They were on the inside lane which was a little bit better than the outside lane. Villarreal was approximately one mile back from those two vehicles but he could see them well because he was up higher than they were.
11	Saw Honda Flip When Van Came Abreast	Villarreal believes the van either started to pass the small car or caught up to it when the car flipped.
	Gravel On Left Shoulder Deep And Caused Accident	The gravel on the left shoulder seemed a little deep and Villarreal believed that the small car caught the inside of the shoulder with a wheel and then flipped. He saw one man flip out of the car.
12	No Traffic Control	By the time Villarreal reached the accident scene, there was already a highway patrolman there. He remembers asking the patrolman why there was not someone directing traffic.
13	Villarreal Asked Superintendent Why No Traffic Control	The highway patrolman indicated to Villarreal that the superintendent of the construction job was at the scene of the accident and Villarreal then asked the superintendent why there was not someone slowing down traffic.
	Saw No Flashing Early Warner Light Sign	Villarreal indicates that the photo marked as Exhibit 3ex appears to have some kind of flashing early warner sign in it just under an overpass. He did not see something flashing in that lane on the day of the accident.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
14	If Early Warner Had Been In Right Lane, Both Villarreal And Van Would Have Hit It.	Villarreal knows he did not see that flashing early warner sign because the way the van was traveling they would have hit the sign if it had been there.
<u>CROSS EXAMINATION OF VILLARREAL BY UDOT:</u>		
17	Villarreal's Truck Throwing Rocks	If people got behind his rig and were close enough to him there would have been rocks thrown on them.
21	Only Sign Was North Of Accident Scene	Villarreal does remember two men in a black car passing him. The sign that Villarreal saw was prior to the construction zone and before the men in the black car passed him.
22	Did Not See Any "No Passing" Signs	There were no construction signs indicating no passing. He was in the righthand lane and people were passing him. He is absolutely sure there were no "no passing" signs.
24	<u>CROSS EXAMINATION OF VILLARREAL BY LEGRAND JOHNSON:</u>	
27	Saw One Sign	Villarreal believes that the one sign he noticed had an advisory speed of 35 mph. It may well have said 25 mph.
28	Did Not See Flashing Early Warner Arrow	Villarreal is sure that the sign he saw was not a flashing arrow sign. He did not see any signs that said "no passing."
29	Only Saw One Sign; No others.	The sign Villarreal saw indicated "construction" or "slow to 35 mph" and that's the only sign he saw.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
30		He does not recall there being any signs in the rest area.
31		He states there's nothing to recall, he didn't see any.
32	Vehicles Passing On Right Throwing Chips Irritated Villarreal.	The first thing that irritated Villarreal as he went over the hill was that a couple of vehicles passed him on the right side throwing a lot of chips.
33	Going 50 MPH When Honda Passed Him	The two men in the black car passed him prior to entering the construction zone and he estimates he was going approximately 50 mph.
34	Honda Not Speeding	He believes they were not going much faster than him because they barely passed him.
36		Villarreal could see the Honda further ahead in traffic at the time the van went past his truck.
37	Van Caught Up With Honda As It Flipped Saw Honda Hit Gravel And Flip	The van caught up with the black car about the same time the black car flipped. The van appeared to be right next to the black car. As the van pulled up alongside the little black car, the little car seemed to wiggle a little bit and it appeared that the left front wheel hit soft rock and flipped.
39	Accident Would Not Have Happened If There Had Been Supervision	Villarreal was irritated because he felt the driver of the van was going at an unreasonably fast speed and also that no one was slowing down the traffic. He feels the accident wouldn't have happened if there had been some supervision.
41	Right Lane Should Not Have Been Open Without Supervision	If the road had been the way it was supposed to be, the accident wouldn't have happened. He feels that the right lane should not have been opened without supervision.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	No signs.	Again, he indicates he did not see any no passing signs.
44		Again, Villarreal indicates there were no other signs besides the one he indicated in his testimony.
		<u>REDIRECT EXAMINATION OF VILLARREAL BY McCORVEY:</u>
45	Early Warner That Appears In Photograph Put There After Accident	Villarreal is referred to his deposition, page 29, regarding whether or not he saw any signs. At the time of the deposition Mr. Villarreal did indicate that if there were signs like what appears in the pictures they had to have been put there after the accident. He also indicated that he had a conversation with the foreman on the job indicating there were no signs. Villarreal indicated to the foreman that there were no people there.
		<u>DIRECT EXAMINATION OF DANIEL WEBSTER BY McCORVEY:</u>
		Webster is employed by the Utah Department of Transportation.
48	Accident Investigator For UDOT	In August of 1986 part of Webster's responsibilities was as accident investigator for the Department of Transportation. His headquarters are in Cedar City and he was in Cedar City on August 7, 1986.
		He did not investigate all accidents but rather just serious accidents.
49	Investigated This Accident And Arrived At Scene At 5:40 p.m.	Webster received a telephone call on August 7th at approximately 4:30 in Cedar City. He got in his car and drove immediately to the accident scene and arrived at approximately 5:40.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
50	Ambulance Gone When Webster Arrived	Webster had to drive approximately 65 to 75 miles to get to the scene of the accident. When he arrived there the ambulance was gone. The only people left there were Curtis Berry, Curtis Shields, Trooper Benson and Agent Lyle Evans that he can recall.
51	Noticed Only One Early Warner On Roadway	Curtis Berry was the inspector for this job for the State. When Webster arrived at the accident scene he noticed an early warner up by the overpass. Webster states this was the second early warner.
	Photographs of Accident Scene Exhibit 3	The witness is referred to Exhibit 3 which are the photographs Webster took at the accident scene on August 7, 1986.
52		Those exhibits are marked 3a , 3ddx ; 53 and 59 .
53	Engineering Diagram Of I-15 Exhibit 17	The witness is shown an engineering diagram of Interstate 15 from mile post 134.2 for demonstrative purposes. It is marked as Exhibit 17 .
54	Location of Early Warners When Webster Arrived	When Webster arrived on the scene the early warner was approximately 50 to 75 feet south of the overpass. There was another early warner actually off the road in the median. The witness indicates where.
	Marked Exhibit 17 With Location Of Early Warners And Signs	The witness is asked to indicate on Exhibit 17 where he saw the two early warner signs by affixing stickers to the diagram.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
55		Webster indicates the second early warner that appears on the photograph as a lit up arrow was about 50 to 75 feet south of the overpass itself. The witness indicates on the diagram where the second early warner would be located. It was in the median not in the traveled lane itself.
57	Witness Indicates On Exhibit 17 Where Signs Located	Webster is asked to indicate on 3a and 3b where the signs were located that he photographed from the top of the hill. Webster indicates on Exhibit 3a where he believes the "right lane closed" symbol was located. He also indicates on Exhibit 3b where he believes the sign "loose gravel" was located.
60		When Webster arrived at the scene of the accident he spoke with Curtis Berry.
	Curtis Berry Told Him That Early Warner Used To Move Traffic Right To Left Because Of Chipping	The witness is directed to his deposition taken September of 1988, page 25, line 4. Webster's deposition indicates that the early warner sign showed an arrow moving from right to left indicating traffic should move from the right lane to the left inside lane because the right lane had just been chipped. Webster knows this because someone told him.
62	Spoke With Curtis Berry About Chipping	Webster indicates in his deposition that Curtis Berry told him about the chipping. Webster took a series of photographs looking from the accident scene north towards the direction the vehicles were traveling.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
63	Started Photographing Accident Scene From North	The first photographs he took would have been north of the rest area looking south and then he took photographs of the accident scene. He spent approximately 3 to 5 minutes at the accident scene talking with Mr. Berry before he started taking photographs.
64	Photographed Signs North Of Rest Area Miles From Accident Scene	At that point in time Webster started photographing the signs that were there.
	"Right Lane Closed Ahead" Sign	Exhibit 3a is a picture of the "right lane closed ahead" sign which was on the north side of the rest area going southbound and Webster was located north of where the off-ramp takes off.
	"Loose Gravel" Sign	Exhibit 3b is of the "loose gravel" signs between the off-ramp and the on-ramp.
65	Flagger Symbol	Exhibit 3c of the flagger symbol signs which were located barely north of where the on-ramp comes off the rest area. Exhibit 3k is a picture of mile post 136. Exhibit 3f is of the same mile post.
66		Exhibit 3fx is an enlargement of Exhibit p3. Exhibit 3e is a picture taken just south of mile post 136 going down off from the hill.
68	No Photographs Of "Do Not Pass" Signs	Webster is not sure if the photograph showing the delineator post has a sign that says "do not pass." He did not specifically photograph any do not pass signs toward the accident scene.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	First Early Warner	Exhibit 3g is the first early warner sitting in the median. The picture is taken from the righthand shoulder. There is no "loose gravel 25 mph" sign on the front of that early warner.
69	Only One 25 MPH Sign	The only 25 mph sign Webster saw in his investigation was the one on the second early warner.
	25 MPH Sign Was On Second Early Warner	Exhibit 3h, 3i and 3j are all pictures taken of the second early warner. Webster was north of the Cove Fort overpass. He believes he took this photograph hoping to show the arrow board lit up. 3j is of the second early warner showing the arrow board lit up as well as the two by six foot "loose gravel" and "prevent broken windshields, speed 25 mph advisory speed" sign. This is the only 25 mph sign he saw and photographed on the project.
70	Photograph Near Where Honda Lost Control	Exhibit 3k is a photograph taken north of the accident site at the point which Webster perceived the vehicle started to loose control and drift to the left shoulder and off of the road. 3m is a picture of the tracks the vehicle left as it went off of the road and started to skid sideways.
	Photograph Where Honda Went Off Road	Exhibit 3rx is of where the vehicle went off the road.
71	Posted Speed Limit 55 MPH	There is a "55 mph" sign which is very prominent in picture 3rx . Exhibit 3n is a photograph taken in the median to show the relationship of the median between the two highways north and south as well as showing the tow truck hooked up to the vehicle.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
72	Photograph of Honda	Exhibit 3r is a picture of the vehicle and 3s is a photograph of the vehicle on its top showing the final resting position.
73		3s is another picture taken from the rear of the vehicle showing the southbound lane.
	Photographs Taken From North To South	With that series of photographs Webster went from beyond the rest area to the north side and down to the accident scene and then started taking photographs looking north. Exhibit 3b is south of the final resting position of the vehicle.
74	Photograph Showing Wheel Tracks	3x is a picture taken barely north of the final resting position, 3y is the same area taken just barely north of the accident, and 3z is showing the southbound lanes and part of the wheel tracks of the vehicle as it went off the pavement and the median.
75	Photographs Showing 2 Inch Pavement Marker Tabs Almost Covered By Gravel	Exhibit 3aa is taken of the median area, 3bb is north of where the vehicle went off the road showing the southbound lanes of I-15. The black marks that can be seen in the photograph are pavement marker tabs placed on the road prior to the oil and chips being put there so that the road does not have to be measured again once the chips are down.
	Photographed Vehicles Traveling On I-15 Throwing Gravel And Debris	Exhibit 3cc is southbound I-15 north of the accident site about the point where the vehicle went off the road showing the traffic in the southbound lane and the highway patrol car in the median. This photograph also shows a van and semi-trailer in the righthand southbound lane. There does appear to be gravel coming off of the wheels of those vehicles.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
76	Photograph Of Final Resting Position Of Honda	Exhibit 3p shows the final resting position of the vehicle, 3dd is a picture taken just about at the accident site after the vehicle had been removed and 3dx is an enlargement of 3d . 3d represents where the vehicle left the road.
77		Exhibit 53 is a photograph of the van just starting down off the hill. In comparison to Exhibit 3e Webster states these pictures were taken just seconds of each other.
78	Webster Was Told Early Warner Pulled Off Road After Accident But Has No Personal Knowledge Whether Any Early Warners Were In Place At Time Of Accident	The representative of the contractor indicated to Webster that the early warner had been on the road at the time of the accident and pulled off after the accident. Webster has no personal knowledge whether or not that early warner was on the road at the time of the accident nor does he have any personal knowledge whether the early warner that was in the middle of the road was there at the time of the accident.
	No Personal Knowledge As To What Signs Actually Up At Time Of Accident	He also has no personal knowledge whether or not the signs at the top of the hill which indicated "flagger," "loose gravel," "right lane closed" were there at the time of the accident.
79	Fatal Accident On I-70 Portion Of Project	There was a fatal accident on a project on I-70 a day or two later, not on I-15. Webster did investigate the I-70 accident approximately 3 or 4 hours after the fact.
80	I-70 Accident Happened When Young Woman Lost Control On Unbroomed Roadway	This was part of the same chip seal project under the same contract. The accident occurred in an area where the outside lane of eastbound I-70 was chipped but unbroomed, and the accident occurred when the car crossed over into the chipped lane, lost control and went off the road.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		<u>CROSS EXAMINATION OF WEBSTER BY UDOT:</u>
85		The accident that occurred on I-70 was initially investigated by Webster.
86	Young Woman Lost Control When Entered Unbroomed Lane At High Rate Of Speed	Webster understood that this accident happened because a young woman came up behind a line of cars traveling in the lefthand lane of eastbound I-70 and she decided to go into the righthand lane which had been chipped. She lost control and went into an embankment and was killed.
88		<u>CROSS EXAMINATION OF WEBSTER BY LEGRAND JOHNSON:</u>
91	I-70 Accident Happened On Unbroomed Lane	With respect to the accident on I-70, there was a curve in the road so this accident was dissimilar to the one on I-15. There were also chips on the road that had not been swept. Webster came to this conclusion from his own observation.
92		<u>REDIRECT EXAMINATION OF WEBSTER BY McCORVEY:</u>
95	Webster Investigated I-70 Accident And Saw How Project Was Signed	Webster did investigate the I-70 accident. He did see the signs in place on I-70. Exhibit 37 does show the way the signs were placed on the I-70 accident. That accident occurred at approximately mile post 5 on I-70.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
96	Traffic Control On I-70 Accident Same As McCorvey's	At this particular accident scene when a person came off of I-70 there was a "road construction ahead" sign, 500 feet from there was a "right lane closed" sign and a "loose gravel" sign. After that was another "loose gravel" sign. All of this was within the first mile of I-15 and for the next 3 or 4 miles there was nothing but "do not pass" signs.
97	No 25 MPH Signs	There were no early warner signs there, there were no 25 mph speed signs there and the inside lane was clean and driveable at any speed.
	Freeway Designed For Speeds Of 80 MPH	Freeway systems are designed for speeds greater than 55 mph. They are designed for speeds into the 70s and 80s.
	I-70 Posted At 55 MPH At Fatal Accident Scene	The outside lane of the I-70 accident had gravel in it and was unswept. There was no 25 mph sign. The speed was posted at 55 mph with no early warner. The nearest "loose gravel" sign or "right lane closed" sign were miles back.
98	On I-70 Accident, Nearest Loose Gravel Sign Miles Back From Accident Scene	The accident on I-70 occurred when this young woman moved to pass someone by moving over into the right lane and off the road. To the best of Webster's memory, Exhibit 37 shows what he saw on the morning of August 11, 1986 when he investigated that accident. Exhibit 37 is offered with no objection from counsel. Exhibit 37 is received.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Meeting at Accident Scene With LeGrand Johnson's Counsel	Webster has met with LeGrand Johnson's counsel and Mr. Shields since this accident. He met with them in November of 1987 at the accident scene.
99	People Present At Meeting	At that time, Webster recalls OGILVIE from the Attorney General's Office, Mr. Peterson, BERRY, Curtis Berry, Arthur Geurts and Webster were all at the accident scene at this time. There were others there although Webster can't recall who they were.
	Purpose Of Meeting Was To Prepare Defense	The purpose of that meeting was to prepare defense for this lawsuit.
126		CAROL CHRISTENSEN IS CALLED TO TESTIFY.
127		<u>DIRECT EXAMINATION OF CAROL CHRISTENSEN BY McCORVEY:</u>
		Carol Christensen resides at 420 West 500 South in Richfield, Utah. Christensen works as a construction laborer for LeGrand Johnson.
128	LeGrand Johnson Employee	She did work on a chip seal project near Cove Fort in 1986. The first day she flagged but after that she laid down road markers along the freeway before the chipper went over it.
130	Foreman Indicated There Had Been An Accident & He Needed Help	Christensen learned about the accident because her foreman, Steve Peterson, who worked for LeGrand Johnson also, came and picked her up right after it happened. He indicated that there had been a serious accident and he needed some help.
131	Helped Flag Passing Traffic At Accident Scene	Steve Peterson took her to the accident site to help flag the passing traffic.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Foreman Asked Her To Take Notes Of Patrolman	After the ambulance left, Steve Peterson asked her to stay with the patrolman and take down any information that she thought LeGrand Johnson needed to have. He indicated to her that he was busy checking on the chipper and needed to make sure all the right signs were in the right places. The reason he needed to do this was to make sure the company did not get into trouble.
	Foreman Left Accident Scene To Check Signs So Company Would Not Get In Trouble	The tabs that Christensen was putting down were approximately 2 inches high and 3 inches wide.
132		<u>CROSS EXAMINATION OF CHRISTENSEN BY LEGRAND JOHNSON:</u>
133	Only One Flashing Arrow Early Warner	As far as she knows there was only one flashing arrow early warner sign per lane that was closed.
134	Does Not Know Location Of Early Warner	Christensen has no knowledge of where these flashers were at the time that the accident happened.
		<u>REDIRECT EXAMINATION OF CHRISTENSEN BY McCORVEY:</u>
136	Could Have Used More Signs/Traffic Going Too Fast Because Signs Too Thin	Christensen believes that the signs might have been spread too thin, that there could have been more on such a long stretch of road. She believes traffic was going a little fast.
137		<u>RICHARD GRIFFIN IS CALLED AS A WITNESS.</u>
		<u>DIRECT EXAMINATION OF RICHARD GRIFFIN BY McCORVEY:</u>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
140	Engineer For UDOT At Time Of Accident	<p>Griffin is from Cedar City and was formerly employed by the Department of Transportation. He was the engineer for Project No. 9991 which was a resurface and chip seal project near Cove Fort, Utah.</p> <p>As project engineer, Griffin was to see that the contractor complied with the specifications, inspect the project and see that the contractor was paid for the work done.</p>
141	Responsible For Specifications	Griffin did have authority to change things if things needed to be changed and had responsibility to see that specifications were followed.
	Contract & Special Provisions	Exhibit 7 is the contract on this job and Exhibit 8 is the special provisions for the contract. The special provisions for the contract are the rules, so to speak, that the contractor is to follow in performing this particular project.
142	Project Size	The project started at mile post 132 and went to 146.1 on I-15. It went from approximately the same point on I-70 to approximately 5.0.
144		There would have been approximately 24 miles of freeway on this project plus approximately 10 miles of freeway going over Cove Fort towards Richfield.
	34 Miles Of Freeway Chip Sealed	That would mean there was approximately 34 miles of freeway included in this project.
145		Griffin states the signs that indicated 25 mph were placed on the early warning devices.
146		There was no sign anywhere other than the early warners that said 25 mph.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		That early warning sign would be an advisory orange sign.
147	Supplemental Specifications Exhibit 8	The witness is asked to turn to his supplemental specifications which is marked as Exhibit 8, specifically 405.08.
149	Engineer Directed Removal Of Surplus Cover Materials	The specifications on the project beginning at 405.08 talk about surplus cover materials being removed from the road by brooming as directed by the engineer. Griffin was the engineer on this project.
	Four Steps Of The Contract	The four steps of the contract are as follows: The engineer would look at the road and see if it was dirty and needed to be swept.
151	UDOT Traffic Control Plan Followed For Sign Placement	Step number two would be to put the tabs on the road ahead of the oil so that there would be a reflector in the lane. The next step would be to put up signs. Griffin was following the traffic control plan for putting signs up. The witness again is referred to the special instructions regarding traffic control.
152	MUTCD	Those special instructions include the following: "Contractor will submit a traffic control plan prior to doing the work for approval by the engineer. This traffic control plan shall comply with the MUTCD requirements and shall include provisions for flagging and pilot car operation."

<u>Page</u>	<u>Issue</u>	<u>Description</u>
153	Did Not Refer To MUTCD Even Though Contract Called For Signing In Compliance With MUTCD	<p>MUTCD stands for Manual for Uniform Traffic Control Devices. Griffin states they did not refer to this manual because they had their own traffic control plan.</p> <p>Griffin did have an understanding that the contract required that the signing on this project be in compliance with the MUTCD.</p>
154	Purpose Of Signs To Protect Public	<p>Griffin did recognize that those signs were important to protect the public. The public needed direction as to where to drive and how to drive and he recognizes that principal.</p> <p>Exhibit 9 is the State of Utah Standard Specifications for Road and Bridge Construction, edition 1979.</p>
155	State Of Utah Standard Specifications For Road And Bridge Construction Part of Contract	<p>Griffin states that these standard specifications were, for the most part, made a part of this contract.</p> <p>The witness is asked to refer to 405-03 in Exhibit 9.</p>
156	Sections 624 & 625 Of Standard Specifications For Road And Bridge Construction Not Eliminated From Contract	<p>Referring to provisions 624 and 625 of the blue book, Griffin states he does not think those paragraphs were eliminated by the special provisions.</p>
157	Sections 624 and 625 Also Regulations Promulgated By Utah Department Of Transportation	<p>624 was a part of this contract. These standard specifications were not only contract provisions but they were rules and regulations promulgated by the Department of Transportation.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
158		Griffin does have an understanding that 624 is a rule and regulation of the State of Utah. The same would be true for 625.
161	Weather & Seasonal Limitations	The MUTCD is referenced in the contract under traffic control. Referring to weather and seasonal limitations, the witness is asked to read the following: "Weather and seasonal limitations: Seal coat shall be applied only between May 15 and August 31, and when the air temperature in the shade and the road temperature is above 75°."
162	Temperatures Taken Daily	75° is included in the contract because there needs to be heat in the pavement to get a good application of the seal coat. This was 75° to be Temperatures measured in the shade. Those temperatures were to be taken every day.
163	Oil Temperature	Curtis Berry was the inspector assigned to this project and was supposed to determine if the temperature in the shade was 75°. Griffin made him aware of the significance of this provision. The oil temperature was supposed to be a minimum of 150°.
164	Oil Should Not Be Put Down When Temperature Under 75°	The oil should not be put down if the temperature is less than 150°. A cooler temperature than 150° could affect the way the aggregate would bond to the road surface. The reason for the 150° temperature is that you want a fluid, uniform flow over the entire surface.
165		Griffin believes that if the air temperature or road temperature is in the range of 75° you're still going to have a good effect.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Contract Required Sweeping Roadway Of Excess Surface Material	The language in the contract is clear regarding the contractors sweeping the roadway. This particular job required the contractor to sweep excess surface material from the road.
166	UDOT Traffic Control Plan Exhibit 10	Exhibit 10 is the traffic control plan in effect on this project. Exhibit 10x is a blowup of that plan. Exhibit 10 and 10x are received.
	No Idea Who Drew Up UDOT Sign Plan	Griffin does not know where that plan came from.
169	If Signs Placed Too Far From Project Motorists Will Ignore Them	This traffic control plan indicates "advance signs to be not more than 5 miles ahead of the seal coat operations." Griffin did not think that this was a good idea because it was too far ahead of the operation. He felt that way because if they were too far away the motorists would start to ignore the signs.
173		Griffin visited the project site August 3 which was a Sunday to determine how many chips were used per square yard.
174	Griffin Wrote Memo To Curtis Berry On August 3, 1986	Plaintiff's Exhibit 11 is identified by Griffin as a memo he wrote to Curtis Berry. Mr. Berry did receive the memo. Exhibit 11 is offered for admission.
175		Exhibit 11 is received.
176		The witness is asked to read the memo dated August 3, 1986.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
177	Memo re: "Too Many Chips"	<p>The memo states: "To: Curtis Berry From: Dick Griffin Subject: I-15 Chip Seal Job Mile Post 132 to Mile Post 144 LeGrand Johnson Contract."</p> <p>"The contractor on the above project is using far too many chips. Out of a 900-foot length pile I figure he's used 300-foot, 200 feet on the east and 100 feet on the west end."</p> <p>"One-third of the 3,000 tons is 1,000 tons of chips used."</p>
	Contractor Using 38.5 Pounds Of Chips Per Square Yard Instead Of 23 Pounds Specified in Contract	<p>Griffin indicates he figured in longhand what the multiplication comes out to be which is 38.5 pounds per square yard. The contract calls for 23 pounds per square yard.</p> <p>The memo goes on to say, "The contract calls for using 23 pounds per square yard."</p>
178	Signs Misplaced On Project.	<p>"Signs on the north end of the project are misplaced. These signs should be immediately in advance of the chip placement."</p>
	Signs More Than Two Miles Ahead Of Chipping, Motorists Not Slowing Down Until Hit Chips	<p>"The signs are over 2 miles ahead of the placement of the chips. It is my observation the traffic did not slow down until it came upon the chips. They hit their brakes after they were on the chips, causing the chips to turn over and carry the asphalt down the road."</p>
	Wanted Contractor To Do One Lane At A Time And Allow Traffic To Use Unchipped Lane	<p>"Try to encourage the contractor to do 1/2 widths all the way through. This will allow traffic to use the unchipped lane, allowing the asphalt to harden and prevent broken windshields. I believe this will result in a much better product."</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		"The contractor is required to wet down his chips between 24 and 48 hours of chip placement. See that this is done. It appeared to me that the wetting was not done Saturday or Sunday as required."
		"Try cutting the asphalt coverage 500 gallons per square yard, or see what effect this has on the product. Also watch the areas that have recently been lane leveled. These may require even bigger changes in asphalt coverage."
179	Visited Project On August 3, 1986	On August 3 Griffin drove the project to see how the job was progressing, determined that there were too many chips. This was a visual determination. Then he went to the stock pile to take a measurement of the chips.
180		When he went to the pile it looked like gravel had been taken from both sides.
188	Noted Several Problems On August 3, 1986 Visit	Griffin did note on August 3rd several problems, one of which was too many chips.
189	Signs Too Far Away From Project	Another problem he noticed was the signs were too far from the project and that motorists would disregard them. He wanted to move the signs closer. He also perceived a problem leaving both lanes of the roadway open and wanted the contractor to do one lane instead of two.
	No Specific Time Periods For Staying Off Lanes Or Moving Signs	Griffin does not remember that there was any set time period for staying off the newly chipped lane. They chipped one side and then left it. He doesn't recall any specific time period before all the signs were taken down.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
190	How Long Lane Closed Left Up To Contractor	After the chips were down and had been rolled, how long the lane was to be closed was left up to the contractor because Griffin wasn't there most of the time.
	Lane Closed For A Day	The lane would have been closed for as long as it took to chip it which usually took all day.
191	Traffic Not Restricted From Chipped Lane Nor Were They Restricted In Speed	The traffic was not restricted from that chipped lane until it had been swept. The speed was not restricted on that chipped lane until it had been swept.
192	Did Not Want 25 MPH Signs Placed On Unbroomed Lanes	There was nothing that the State did or the contractor did to let the traffic know they were to go 25 mph on that chipped road until it was swept. Griffin did not intend any 25 mph signs to apply to that road after it had been rolled but before it had been broomed.
193	Early Warners Only Used While Work Being Done. Early Warners Were Removed Before Lane Broomed	Griffin would expect the early warner signs to be pulled off the highway as soon as it was rolled and in fact those early warners were only to be there when they were actually doing work on the road.
194	38.5 lbs Of Gravel Per Square Yard Was A Mistake	38.5 pounds per square yard is an absurd amount of gravel. Approximately a month ago Griffin filed an affidavit that said when he computed those figures he had made a mistake. He learned about that mistake on August 4 when he was on the job site with Curtis Berry and the project superintendent, Steve Chase Peterson. Griffin adjusted the chip spreader at this time.
195	8% Overrun On Chips	That job did have a little overrun on the chips. Eight percent.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
196	25 lbs Of Gravel Applied Instead Of 23 lbs Per Square Yard	Griffin would agree that they put down approximately 25 pounds instead of 23. As far as that providing any safety hazard to the public, Griffin states the traffic does adjust to the condition of the road and usually goes slower if there's more chips.
197	55 MPH Speed Sign Used On Project	There were not any speed limit signs on the road on the project except for 55 mph signs.
198	Wanted Traffic To Drive 55 MPH On Unswep Lane	<p>Griffin believes an unswept lane is safe to drive at the speed of 55 mph before sweeping and that's what he was allowing traffic to do on this project.</p> <p>Griffin was mistaken about the figure 38.5 pounds per square yard on the road instead of 23. 38.5 pounds per square yards would have been far and away too much. This did concern him for safety reasons.</p>
200	Motorist Should Have Been Able To Drive 60 MPH In Unswep Lane	Griffin did indicate in his deposition which was taken October 5, 1990, page 45, line 10, that he considered a safe speed before a lane was swept 50 or 60 mph.
201	Right Lane Remained Open Even Though Unswep	The right lane was open and available for motorists' use. It had been chipped but not swept.
202	Too Many Chips Not Hazardous	Referring to Griffin's deposition, page 13, line 19, Griffin is asked whether or not using too many chips presents any safety hazard to the public which are traveling on the road and Griffin indicates no.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	More Chips Makes Traffic Go Slower	There is the potential for someone flipping a rock and it takes longer to get the chips off. It is a waste of chips but not a hazard. Griffin also indicates in his deposition that 38.5 pounds per square yard versus 23 pounds per square yard does not pose a hazard and is not more dangerous. His reason for saying that in the deposition is that the more chips put on the road the more careful the traffic is going to be. The traffic will slow down more.
203		Griffin also indicates in his deposition that a motorist could safely drive the same speed with 38.5 pounds per square yard as he could with 23 pounds per square yard. If there were excess chips on the road that had not been broomed, a safe speed for a motorist on that type of project would be the same at 38.5 pounds per square yard as it would be at 23 pounds per square yard.
206	Chips Might Distract	Griffin would agree that the fact there are flying chips could divert drivers' attention from their driving tasks.
	Chips Might Promote Aggressive Conduct	He would agree that motorists might enter into aggressive conduct in trying to take the lead so they are not be sprayed with chips or they might slow down.
207		Exhibit 12 is the project ledger which is a summary of the contract items for the project. Referring to item number 4 on the contract, it says, "Cover material type C" and Griffin's signature appears on that page.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
208	Overrun of 8% Because Chips Spread Thicker Than Estimated	This item number indicates that there was an 8% overrun because the chips were spread thicker per square yard than was estimated. This was not an 8% overrun on the first day but rather for the total job.
210	Admits That There Were Problems With Traffic Speed On This Project	There was a fatality because of speed. Some of the traffic was going too fast and passing.
211	Griffin's Diary	Exhibit 4 is a copy of Griffin's diary for Wednesday, July 30th.
212	Signs Too Thin	Griffin did at one time ask someone to get more signs because the signs were too thin.
215	Contractor Even Called Highway Patrol To Help Control Traffic	Referring to Exhibit 4, August 12th, Griffin has a note "Larry Jardine asked Highway Patrol to shape up job for I-15/I-70" which Griffin believes refers to the fact that they asked the Highway Patrol to appear on the job to see if they could slow the traffic down. Griffin believes he did call the Highway Patrol.
216		<u>CROSS EXAMINATION OF GRIFFIN BY UDOT:</u>
217	Familiar With UDOT Traffic Plan	Griffin was familiar with the traffic plan used on this project because it had been utilized in District 5 previously.
218	Does Not Know How Long This UDOT Plan Had Been In Use	He does not know how long it had been used but it had been used in previous years and this was the designated traffic plan for use on this project.

TRIAL TRANSCRIPT SUMMARY FOR NOVEMBER 9, 1990 (R. 3005)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
<u>CROSS EXAMINATION OF GRIFFIN BY LEGRAND JOHNSON:</u>		
18	He Is Familiar With MUTCD	He's familiar with the MUTCD manual but states MUTCD was not generally used on a project. This was thought out by people in traffic.
	Griffin Provided UDOT Traffic Plan Used On Project	It was not his intention in District 5 during the first meeting regarding this project to furnish the contractor with a traffic control plan. Rather, he asked if they had a plan and they did not. He offered them the opportunity to look at UDOT plan and contractor did.
22	Wanted Signs Closer To Actual Chip Work Done To Slow Traffic Down	Griffin wanted to get the signs near where the actual chip job had been done rather than being so far in advance of the work and having traffic travel over two miles of pavement before they came to the actual chipping.
26	Recalls One Early Warner With 25 MPH Advisory Speed Sign	Griffin remembers seeing early warner that said, "Loose gravel, prevent broken windshields, advisory speed 25 mph."
27		Griffin remembers seeing that on one early warner.
	Griffin Not On Project On Day Of Accident	Griffin was not on the project the day of the accident. How often he would be there would vary.
38	Road Could Be Safely Driven At 55 MPH Even With Chips	It is his opinion that if someone drove normally, they could drive safely on that road at 55 mph.
40		<u>REDIRECT EXAMINATION OF GRIFFIN BY McCORVEY:</u>
		Griffin believes that both lanes of traffic were left open even before one of the lanes was swept because a car driving 25 mph would sustain more chip damage than someone driving 55 mph.
42	Traffic Traveling More Than 25 MPH	They were probably going more than 25 mph as they went by the work area.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Did Not See Signs On Day Of Accident	Griffin was not on the project the day of the accident. He did not see the signs on the day of the accident. On this job it was the contractor's duty to move those signs.
43	UDOT Responsible For Motorist Safety On Project. If Contractor Dissatisfied With UDOT Plan, Griffin Might Make Changes	UDOT has responsibility for safety on the job site. Griffin gave the contractor a chance to review UDOT plan for traffic control and if LeGrand Johnson had any comments on the plan, Griffin would have duly considered those comments. If LeGrand Johnson had not liked the plan, Griffin might change the plan that was in effect.
44	"Do Not Pass" Signs Not In Place Throughout Project	The "do not pass" signs are only put up for the day's work. You would not want them there through the whole project.
45		Those signs are put up as you do each piece of the chipping. They are not taken down at the end of the day and, in fact, they are left up until the project is completed. So once they are up, they stay up. When one entered the project on the particular day of the accident, one would have driven through approximately 8 miles that had been chipped much earlier in the project and those lanes that had been chipped would have been broomed.
46	Both Lanes Open At Accident Scene	There were two lanes and motorists could change lanes and drive side by side. If there were any loose chips that wouldn't be a prudent thing to do, even with a "do not pass" sign.
	Signs Indicated Not To Pass On Two Open Lanes	For almost 8 miles of road on interstate freeway, the signs indicated that faster traffic could not pass slower traffic on two open high speed lanes.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
47	But Griffin Ex-pected Motorists To Pass Despite Signs	As far as whether or not this is realistic to think that as a matter of traffic control on this freeway people are not going to pass, Griffin states if there were no chips coming off the road, then they would pass.
48	Griffin's Supervisor Indicated Project Needed To Be Swept	Steve Noble was Griffin's supervisor. Noble was the district director. On August 4th Griffin notes in his diary that he had a conversation with Noble about this project. Noble told Griffin that the project looked like part of it needed to be swept.
49	Griffin Admits May Have Told Contractor To Close Lane	When Griffin is asked regarding Mr. Peterson's deposition testimony that Griffin did come in and indicate that he was to keep traffic off until it was swept, Griffin indicates he might have said that.
	Exhibit 13 Explanation Of Gravel Overruns On Project	Exhibit 13 is an explanation of overruns and underruns exceeding 1% of the original contract amount. The last three lines of Exhibit 13 say, "The quantity overran because we spread the chips thicker per square yard than was estimated. The application rate was increased to prevent traffic from turning the chips, causing black wheel paths and future thick traffic lanes."
55		REVEREND BARTOW IS CALLED AS A WITNESS AND SWORN. <u>DIRECT EXAMINATION OF REVEREND BARTOW BY McCORVEY:</u> Charles Bartow lives at 120 La Cresenta, Vallejo, California. He is a professor at San Francisco Theological Seminary and a minister.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
56	Drove Cove Fort Chip Seal Project	On August 6, 1986, Reverend Bartow drove a stretch of Interstate 15 near Cove Fort, Utah. He was at the beginning of a sabbatical leave and he and his family were taking a vacation. They were driving their newly purchased Buick Century station wagon.
57	Entered Construction Zone Full Of Loose Gravel/No Signs Re: Speed/Passing	They entered a construction zone that was full of loose gravel. The only sign he recalls seeing is one that said "gravel." He does not recall any signs indicating that he ought to slow down or that he should not pass.
58	Never Experienced Anything Like The Condition Of That Highway Full Of Gravel	Reverend Bartow had never encountered anything like this before. All the lanes were full of gravel and there was enough noise being made that he was unnerved by it. His wife commented that she was glad they had air conditioning and could close the windows because someone could get hit with one of the rocks.
59	Gravel Thrown At Vehicle By Others Going Too Fast	A pickup truck and several vehicles went by the Reverend at an unreasonable speed and splattered his car on the left side and the front. He believes he was driving approximately 25 mph, sometimes less. He believes the other traffic was traveling at about 50 mph, in some cases more.
	Should Have Been Traffic Control	Reverend Bartow felt there ought to have been some kind of traffic control and signs indicating that people should not be passing. He felt that the speed limit should have been lowered. He has driven many roads and this is the first time he has encountered something like this before.
60	Very Hazardous	He felt it was definitely hazardous and was very angry.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
61	Letter to DOT Exhibit 30	Exhibit 30 is a letter that Reverend Bartow wrote to the Department of Transportation and bears his signature.
		The date of the letter is 8/6/86 which is the day he wrote the letter.
62		Exhibit 30 is received.
	Wanted to Be Reim- bursed For Damage Done To His Car	Reverend Bartow wrote the letter because he was angry about the road conditions and the damage it did to his car. He felt he should be reimbursed for the damages.
		Reverend Bartow is asked to read his letter into the record.
		"Gentlemen: I was traveling north on Interstate 15 one-half to one hour south of Milford when I came upon road repairs. A sign said, 'Gravel.' I slowed up so as not to spray up gravel on my new car.
		I stayed in the right lane, which was at least somewhat less filled with loose gravel.
		A few cars and pickups passed me at 50 to 55 mph and sprayed the side of my car with gravel. It is now full of chips and scrapes.
	UDOT Responsible For Lack Of Traffic Con- trol, Unswept Lane Should Have Been Closed	It seems to me irresponsible of road crews to leave an interstate highway in such shape. One lane should be closed for repairs until fully ready for service, then the next lane repaired.
		Traffic should be slowed into the single safe lane. This method, as far as I know, is observed in every other state.
	Furious About Damage	By the way, the gravel-sprinkled surface continued

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Done To His New Car By Gravel	for a number of miles. Frankly, I am furious about the conditions which resulted in extensive damage to the paint on my just purchased car. To my mind the fault for damages must be laid at your door.
63		Please respond promptly. Thank you for your considerate response." Signed, Charles L. Bartow
66		<u>CROSS EXAMINATION OF BARTOW BY LEGRAND JOHNSON:</u>
	Bartow Angry At Other Drivers	Reverend Bartow did indicate that when the cars passed by him, he was very angry.
74	Road Dangerous Because Of Excess Gravel	Reverend Bartow does not know who was responsible for the gravel on the road. He only knows there was gravel on the road that was excessive and dangerous.
		<u>REDIRECT EXAMINATION OF BARTOW BY McCORVEY:</u>
75	Gravel On Road Was Fairly Large Pieces Of Stone	The gravel on the road was not fine stones but fairly substantial pieces of stone.
76	With Each Passing Car Bartow's Car Hit By Barrage Of Gravel	Reverend Bartow would describe the sound he heard as the gravel hit his car as a constant spraying against the side of the car. The car passing them caused a great deal of concern because his car was being constantly hit by a barrage of stones.
	No Other Reasonable Drivers That Day	Reverend Bartow did not encounter any other reasonable or prudent drivers that day on the road.
78		DARRELL DAVIS IS CALLED AS A WITNESS.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
<u>DIRECT EXAMINATION OF DARRELL DAVIS BY McCORVEY:</u>		
Darrell Brent Davis lives at 1250 North 185 West in Beaver, Utah. He is the custodian of an elementary school and also serves as an EMT.		
On August 6, 1986 he was called to an accident outside of Cove Fort, Utah.		
79	EMT For This Accident	Davis pulled up to the scene of the accident in an ambulance and could see a car on its top in the southbound lane. There was one person laying right across from there and another one up the road a ways.
80	Assisted McCorvey	Davis assisted McCorvey. People at the scene of the accident indicated that he was complaining he could not breathe, was having shortness of breath and was quite upset.
81	Road Dusty	Davis states while he was working on McCorvey the road was very dusty.
	Ambulance Spun Out On Gravel	He loaded McCorvey into the ambulance and as they pulled onto the southbound lane they spun out on gravel.
82		Davis was trying to get to McCorvey as fast as he could. He walked from south to north at accident scene.
83	Does Not Recall Seeing Early Warner	He does not recall seeing an early warner in the roadway.
87		MR. CURTIS M. BERRY IS CALLED AS AN ADVERSE WITNESS.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		<u>DIRECT EXAMINATION OF BERRY BY McCORVEY:</u>
		Berry is employed by the Utah Department of Transportation.
88	Inspector for DOT For This Chip Seal Job	He was employed by UDOT on August 7, DOT for this 1986 as an inspector. He was the inspector on this chip seal operation that was taking place near Cove Fort, Utah.
	Griffin Project Engineer	Mr. Griffin was the project engineer in charge of this project for the State of Utah.
89	Berry Was Griffin's Eyes & Ears	Mr. Griffin was not on the project every day. Berry was his eyes and ears for the project because he had other responsibilities and other projects in the district. This was Berry's only responsibility and he was there every day. The project started on August 1 and concluded somewhere around the 12th or 13th.
90		Exhibit 18 is shown to the witness. Berry indicates his signature does appear on this exhibit.
91	Exhibit 18 Is UDOT Maintenance Daily Distribution Report	Exhibit 18 is called a Utah Department of Transportation Maintenance Daily Distribution Report. This report was filled out everyday of the project while Berry was working. This keeps count of the hours he is on the project. At the bottom of this document is a comment section where Berry can indicate what is happening and where he is on the project.
92	Berry Would Take Griffin's Comments To Contractor	Occasionally Mr. Griffin would come onto the project and they would discuss any problems or any concerns he might have. Berry would then take those concerns to the contractor.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
93		Berry had a number of responsibilities on this project.
	UDOT Traffic Control Plan Shown To Berry	Exhibit 10 is shown to the witness. It is the traffic control plan for this project.
94	Traffic Control Plan Berry's Responsibility	Part of Berry's responsibility was to see that the traffic control plan was properly put into place.
	His First Chip Seal Inspecting Job And He Worked With Contractor Putting Signs In Place	This was Berry's first chip seal inspecting job. He worked with Mr. Peterson in putting this sign plan in place.
95	Berry's Responsibility To See That LeGrand Johnson's Superintendent Knew What To Do	Berry's responsibility was to see that Mr. Peterson knew what to do.
		Exhibit 11 is a memo written by Mr. Griffin to Berry on August 3, 1986.
96	Received Memo From Griffin	Berry received it on August 4th. The memo mentions things he had observed on the job on August 3rd.
	UDOT Plan Called For Black And White Regulatory 25 MHP Speed; Whereas Orange 25 MPH Sign Actually Used On Project Was Advisory	That plan indicates that there are to be early warners that indicate "speed limit 25 mph." They are black and white which means they are regulatory.
98		Because it's a regulatory sign that means it's against the law to go faster than 25. If the signs were orange that would mean just advisory or a suggestion that they go 25 mph.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Berry Always On Site Checking Work	Berry would usually start or arrive at the job about the same time as the crew and usually was there with them all the time. He put in long hours and it would be fair to say that he was at the job most of the time checking on things and seeing how things were going.
100	Did Not Have Copy Of UDOT Traffic Control Plan	Berry had a copy of that sign plan the first day on the job. He gave this to Mr. Peterson so after the first day he did not have a copy of the plan.
101	Berry's Responsibility To Carry Out All Specifications Of Contract	It was also Berry's responsibility to see that the right amount of rock went down on the job and the right amount of oil. It was also his responsibility to see that the contract was carried out in accordance with the specifications of the contract.
	He Was UDOT's Man On Project	Again, Berry was Mr. Griffin's man on the job.
102	Relied on Contractor As Berry's First Job	But this was his first inspecting job and to a certain extent he relied on Mr. Peterson to help him carry out that job.
104	Griffin Indicated Problems	When he met with Mr. Griffin on August 4th, which would have been a Monday, he does not recall if he also met with Mr. Peterson. He did talk over Mr. Griffin's memo with him and he indicated the problems he saw on the project.
107	Too Much Oil Causes Tracking	If there's too much oil on the road, it will seep through and form tracks.
108	Griffin Told Berry To Close Chipped Lane Until Completed And Berry Told Contractor	Berry did talk with Griffin about closing one of the lanes while they were chipping it and keeping the traffic off while they were chipping it. Those things were also suggested to Mr. Peterson and he agreed.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
109		The game plan was to complete one lane at a time.
110	Berry Would Keep Lane Closed Until Broomed And Then Open It To Traffic	Berry was on the job and saw Peterson put the oil down, put the rock down, roll it, keep the traffic off of it, then open it up to traffic. Although it did not necessarily get broomed the same day. They would keep it closed until it was broomed and then open it up.
112	UDOT Sign Plan Required 25 MPH	The sign plan required 25 mph.
113	25 MPH Required Surprised To Know Only One 25 MPH Sign	Berry does not know how many 25 mph signs were on the project. It would surprise him to know there was only one.
114	Met With LeGrand Johnson Counsel At Accident Site	Berry has gone out to the site of the accident and met with LeGrand Johnson's attorney and some expert witnesses for the defendants in this case.
115	Does Not Recall How Many 25 MPH Signs On Project	The witness is referred to Exhibit 3g which is an early warner that Mr. Webster took a photograph of which was pulled off on the right side of the road. He can not tell for sure if there is no "25 mph" sign or any sign on the early warner. He does not recall if there were any other "25 mph" signs on the project.
120	Berry's Diary	Exhibit 20 is Berry's diary kept of this project to record events day by day.
121	Berry Took Air Temperatures But Did Not Know Purpose	Referring to the second page which gives the project name and indicates this is referring to the I-15 project, on August 3rd it indicates the weather was clear, the temperatures were in the 70s and 90s. Berry would take temperatures every day but not for any particular reason.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
122		Berry would also try to write down how much rock he used every day.
124		Referring to Berry's diary on Tuesday, August 5, 1986, again, he indicates the temperature. He writes down the mile post 140 to 144, northbound lanes, 13 feet wide, and then mile post 137.5 to 136.3, northbound lanes, 26 feet wide. Next is mile post 137.9 to 136.2, southbound lanes, 26 feet, and then mile post 136.2 to 133, 13 feet wide.
125		<p>On Wednesday, the 6th, the diary indicates how much seal coat is used and indicates that the ramp at Dog Valley is done using approximately 1500 gallons of oil for 75 feet. It also indicates that 8000 gallons of oil was left over from 8/5/86, and 1500 gallons of the 8000 left over is used so the second day there is another 2500 gallons left over.</p> <p>This oil is trucked from Salt Lake City.</p>
126	Diary for Day Of Accident	Referring to Thursday, August 7th, the date of Mr. McCorvey's accident, Berry did not indicate the temperature. It indicates on the diary that on this day he used up the two-day old oil. They began the southbound lanes from mile post 136.2 to mile post 133 and did the 13-foot wide one lane. That would be the outside lane, east side of the southbound lane.
127		If someone were driving down Interstate 15 on that day, they would hit the project at approximately mile post 144.
128	Both Lanes Finished Except Maybe Being Swept	Both lanes were done although they may not have been swept, they had been oiled and chipped and rolled.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Then you come up to the top of the hill near mile post 136.2 just beyond the rest area and both lanes are done to that point in time. Then the fast lane is done all the way down to mile post 133. These had all been completed before August 7th.
	Work Being Done On August 7th	On August 7th work was going on at the rest area at the top of the hill, the on and off ramps plus the slow lane.
	Marks Exhibit 17 Where Chip Seal Work Was Being Done On Day Of Accident	Referring to Exhibit 17 which is the diagram of I-15 going south, the witness is asked to mark in red what was being done on the roadway on August 7th.
131	High Speeds Can Be Unsafe On Unswept Lane, Traffic Should Be Slowed Down	Berry was the inspector on the chip seal operation for this project. In his opinion, high speeds on chipped road can be unsafe. He does feel that traffic should be slowed throughout the project and if that were done there would be fewer accidents.
132	May Have Taken Traffic Control Course	Berry believes he has taken a course on traffic control through work zones although he indicated once that he had not. He was mistaken.
	Did Not Have MUTCD With Him	Berry did not have a manual on the job with him.
133	Never Used MUTCD	He does not have a great deal of experience working with the manual and in fact has no experience. He states he knows what the book is and he's looked through it, but that's the extent of it.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Motorist Safety Part Of UDOT Responsibility On This Project	Referring to Exhibit 18, August 11, 1986 time sheet, Berry was working on I-70 and I-15 that day. Part of his responsibility was safety on this project and he was traveling the project looking at how it was being accomplished, both traffic control and the quantity of the work being done.
134	Was Not Aware Of Fatal Accident On I-70 Even Though Supposedly Present On I-70 That Day	Berry was not aware until his deposition was taken approximately a month ago that there was a fatal accident on I-70 the day he was working there. Mr. Peterson did not tell him about the accident.
135-35	If Signs Not Correct Berry's Job To Tell Contractor	Berry does not recall what kind of signs were out that day, but if he had noticed and there was something different from the traffic control plan marked as Exhibit 10, he certainly would have told the contractor.
137	Does Not Recall Con- versation About Signs Being Too Thin	Berry does not recall talking with Mr. Peterson on August 8, 1986, the day after the accident regarding the signs being too thin on the project.
138	No Diary Entry For Early Warners Or Flaggers On Accident Date	Berry does not have an entry in his diary on August 7, 1986 regarding the hours and operation of the early warners. He does not show any flaggers working that day either.
148		CURTIS BERRY IS CALLED BACK TO THE WITNESS STAND.
		<u>CROSS EXAMINATION BY UDOT:</u>
152	25 MPH Signs Required On 12 Mile Project Area	The 25 mph advisory signs were used within the work area. Berry understands the project area to mean mile post 132 to mile post 144 which is a distance of 12 miles.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Berry Gave His Copy Of UDOT Traffic Control Plan To Contractor	Berry was given the sign plan at the beginning of the project, and he in turn gave it to the contractor.
159	Berry Could Shut Down Project If Things Were Improper	He also had the power to shut down the operation.
160		Berry did not require the permission of the contractor to stop the job.
161	Berry's Job To See That Sign Plan Was Implemented	It was his responsibility to see that the signing was accomplished or carried through. The design of the traffic control plan was the responsibility of UDOT.
163		<u>CROSS EXAMINATION OF CURTIS BERRY BY LEGRAND JOHNSON:</u>
170	Went To Accident Scene	Berry did go to the scene of the accident and look at the roadway. He was curious about where McCorvey's car went off the road and walked around the inside narrow emergency lane.
171	Claims He Saw No Excess Gravel	He did not see any excess of gravel in that area.
173		Berry does not recall, as far as he could see, any amount of gravel at the accident scene that he would consider dangerous.
		<u>REDIRECT EXAMINATION OF BERRY BY McCORVEY:</u>
176		Exhibit 19 is the pages out of a diary Berry was keeping just for flagging personnel and early warning devices.
177		Referring to August 7th, Berry indicated he had two early warning devices twelve hours each.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
178		<p>On Thursday, August 7th, Berry indicates in his diary that they began work at 7:30 so the early warners ran from 7:30 to 7:30.</p> <p>Mr. Webster testified that he got to the accident scene between 5:40 and 5:45 and began taking pictures a few minutes later. Exhibit 3x is one of the pictures he took which would have been around 6:00.</p>
179		<p>Berry states he sees one early warner in Exhibit 3x.</p>
182		<p>Berry referred to UDOT's second set of interrogatories, answer to interrogatory number 4(a)(2).</p>
183	One 25 MPH Sign On Project	<p>"With respect to the signing advising the windshield advisory, 25 mph, please state how many signs were there." "Answer: One."</p>
186	Confused About 25 MPH Speed	<p>Berry states he did indicate in direct examination that it's important to keep traffic speed down to prevent accidents, but states he did not understand the question regarding 25 mph throughout the project.</p>
187	Also Confused About Need To Reduce Motorist Speed	<p>Berry is referred to his deposition which asks the same question regarding speed limit throughout the project and Berry indicates that he probably was confused then also.</p>
188	Remembered During Break That He Had Been Confused For Years	<p>He states maybe he just remembered during the break and now he is not confused.</p>
	Drove Project Daily	<p>Berry did drive the project daily.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
199	Met With LeGrand Johnson's Counsel During Break	He did have a meeting with LeGrand Johnson's attorney during the break.

SUMMARY OF TRIAL TRANSCRIPT FOR NOVEMBER 13, 1990 (R. 2998)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
26		<p>STEVEN CHASE PETERSON IS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF.</p> <p><u>DIRECT EXAMINATION BY McCORVEY:</u></p> <p>Steven Peterson resides in Nibley, Utah which is on the outskirts of Logan. He works for LeGrand Johnson Construction Company.</p>
27	Superintendent Of Chip Seal Job	Peterson was the superintendent on this chip seal project which included north and south bound lanes of Interstate 15 and east and west bound lanes of Interstate 70.
	Required To Know The Contract Specifications	As part of his responsibility as superintendent, he was required to know the contract specifications and see that they were met. In doing his job he worked closely with the State, in particular, Mr. Griffin and BERRY.
28	UDOT Traffic Control Plan	<p>When this project started, the State provided LeGrand Johnson with a traffic control plan. Exhibit 10 is that plan.</p> <p>The big early warners belonged to LeGrand Johnson.</p>
29	LeGrand Johnson Owned Early Warners & Loose Gravel Signs. But State's Responsibility To Furnish Signs	The loose gravel signs were also LeGrand Johnson signs. It was the State's responsibility to furnish signs.
31	UDOT Decided When To Sweep Chipped Lanes	It was LeGrand Johnson's responsibility under the contract to sweep the lanes, but it was up to the UDOT engineer to say when it was to be swept.
33	Does Not Know Why UDOT Was Brooming Project	The witness is referred to his deposition at page 28 where he indicates he does not know why the State was operating a broom on this project except that maybe it would be a little help.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
34	Broom Is 8 Feet Wide, So Takes Two Passes To Sweep Each Lane	The broom clears a path approximately 7 or 8 feet wide and they were chipping lanes approximately 13 feet wide. This means it would take at least 2 passes with the broom to clear off any surplus gravel.
35	UDOT's Answers To Plaintiff's Third Set Of Interrogatories, #2	<p>Counsel reads into the record interrogatory answers, first from the State of Utah's answers to plaintiff's third set of interrogatories, interrogatory number 2. "In the deposition of Richard K. Griffin, former maintenance engineer for the Utah Department of Transportation, taken on September 21, 1988, at pages 60 through 62, he testified that the State of Utah had utilized one of its brooms on the construction site where the automobile accident occurred, which is the subject matter of this action."</p> <p>"With respect to those statements, state or give the following information: the number of days the broom was used on this job, the number of hours the broom was used, the name or names of each person who operated the broom on those days, the compensation paid by the contractor to the State of Utah for the use of the broom."</p>
	UDOT Brooming Project	The answer, "Lynn Perkins, 5 hours, August 3, 1986. Alt Staples, 6 hours August 4, 1986. Alt Staples, 5 hours August 5, 1986. Alt Staples, 7 hours August 6, 1986. Alt Staples, 7 hours August 7, 1986. Alt Staples, 6 hours August 8, 1986. Alt Staples, 6 hours August 14, 1986. Compensation, none."
38	At Accident Scene Left Lane Was Safe To Drive At 55 MPH	In Peterson's opinion, on the day of the accident, traffic could have traveled safely at 55 mph southbound on Interstate 15 through the project as long as they did not have equipment there.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Right Lane Closed Because Not Broomed	Peterson kept the right hand lane closed because it wasn't completely broomed at the time. He's not sure if it was closed right at the place of the accident, but states he knows it was closed where his crew was working.
41	Unbroomed Outside Lane Closed	<p>Peterson states he probably indicated in his deposition that the lane was closed because it had not been broomed, but also it was closed because they had equipment in the area.</p> <p>Mr. Griffin, the State engineer, could have told him to keep the lanes closed until they were broomed.</p>
	Discussion With Griffin After First Day Of Project	Peterson's second deposition is published and the witness is asked to look at page 7. In this deposition, Peterson indicates that Dick Griffin was the engineer for the State of Utah. He came in and after the first day of the project said we needed to chip the road and let it set. He indicated they needed to chip it, roll it and then keep the traffic off of it that day. Sweep it that night and break it loose that evening. He indicated he wanted this done one lane at a time if possible. He believes that they tried to keep the people off.
44	Arrived At Accident 10-20 Minutes After Accident Happened	Peterson did indicate in his deposition that he arrived at the accident 10 or 20 minutes from the time it happened.
49	Get Witnesses Names	Peterson was at the scene of the accident for about 15 or 20 minutes and then gave his daytimer to Carol Christensen and asked her to get down witness names from the highway patrolman. Peterson then left the accident scene which occurred at about mile post 134.2.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Left Accident Scene To Check Signs	Peterson left to check and make sure that he was in compliance on the signing and also to check on his crew to see if they were ready to move to wherever they were supposed to be next.
51		In Peterson's deposition taken October 13, 1990 on page 27, he did indicate that sooner or later he went back to the accident, although he can't remember how long or when.
52	Drove Whole Project To Check Signs Noting Location Of Each Sign	<p>Peterson further indicates in his deposition that he does not know if he went back and looked at the signs between the first time he was at the accident scene or the second, but right after he left the accident scene he drove through the whole project to check and make sure his signs were up to code.</p> <p>Peterson does not know if he went the length of the project or the length of the day's production.</p>
53		Again referring to Peterson's deposition, page 32, Peterson did indicate that he left the accident scene, got on the northbound lanes of the interstate, and headed to the beginning of the project. He then turned around and came back through the project, driving slowly, so that he would be sure where his signs were. He does not think that he stopped.
54	Diagrams Of Signs Prepared Next Day From Notes	<p>He took notes regarding where his signs were on a piece of scratch paper. From that information he drew a diagram of where the signs were located the next day.</p> <p>Exhibits 35 and 36 are shown to the witness and he identifies them as a document that indicates where his signs were. 36x indicates where his signs were with reference to where the flag people and construction workers were working at the time.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Exhibits 35 and 36 are received into evidence.
55	After Accident Says He Slowly Drove Entire 20 Miles Of Project To Check Signs	Peterson left the accident scene which was at mile post 134 and drove north to 144, crossed over and came back through the project, traveling north to south.
58		On the day of the accident the project had been chipped and completed both lanes of the southbound highway all the way to about mile post 136.
59	Describes Signs Up On Day Of Accident	Peterson had "do not pass" signs up on freshly chipped, broom swept perfectly good freeway. The "road construction ahead", "right lane closed", "loose gravel", and "flagmen" signs were actually by the rest area or at the crest of the hill.
60	Early Warners In Middle Right-Hand Lane	The two early warners were set right in the center of the righthand lane. There were no cones in front of these early warners, no barricades or sawhorse type signs that sometimes are put out in front of early warners. They were just right in the middle of the road.
73		Referring to a diagram Peterson states he did make this diagram from notes he took on the 7th when he drove the project of where the signs were located. He does not know where his notes are and he made the diagram on the 8th.
		Exhibit 35 is a diagram that Peterson drew.
74		Exhibit 36 was also made on the 8th which is the same as 35 except for it shows where his chipping crew operation was going on at the time of the accident. There were also flaggers drawn on this diagram.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
76	Peterson Pulled Early Warner Off Road After Accident	The witness is referred to pages 37 and 38 of his deposition where he indicates he did pull off one early warner by using a pickup truck. He probably said he put it in the median.
77		<p>Peterson states he might have indicated to OLSEN during his deposition that the early warner shown in Exhibit 3ex is the one that was pulled off the road.</p> <p>Referring to page 62, Peterson did indicate that the early warner he pulled off the road into the median appeared in photograph 3ex.</p>
78	Early Warner Moved Because Should Not Leave Them On High-Way Overnight	The early warner was pulled off because they were not supposed to leave them on overnight.
79	Lawyer P. K. Peterson Came To Accident Scene Next Day	One of the things Peterson did that day was to call company headquarters in Logan. The next morning, on the 8th, Mr. P.K. Peterson came to the accident scene.
80	Took Photographs	<p>He took some photographs at the accident site.</p> <p>Exhibits 54, 55 and 56 are photographs taken by P.K. Peterson on the 8th of August.</p>
81		<p>Exhibits 54, 55, 56 and 57 reasonably, fairly and accurately portray the accident scene the day after the accident.</p> <p>Exhibits 54, 55, 56, 57 and 58 are offered as evidence. Exhibits 54-58 are received.</p> <p>The witness is asked to mark these photographs by writing "P.K." on the back so that he will know that these were pictures taken the day after the accident.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
82		Exhibit 54 is a picture of Peterson standing at approximately the area that the McCorvey vehicle left the road.
83		Exhibit 55 is probably the point where the car started flipping. Exhibit 56 is the path of the tires of the automobile that was in the skid, and 58 is one of Peterson's early warners.
85	Ridge of Gravel Tab In Road	Referring to Exhibit 54 , this was taken roughly in the area where the car ran off the road by Mr. Webster the evening of the 7th of August. There appears in the photograph a sort of ridge of gravel on the shoulder. There is a tab which is 2 inches high and Peterson would say the gravel or ridge is almost to the yellow portion of the tab.
86	Definite Border	A better perspective might be Exhibit 34x where you can see a dropoff edge of the road. Peterson indicates there's a definite border.
87	Swept Road Before Lawyer P. K. Peterson Took Photograph	Referring to a picture taken by P.K. Peterson on the 8th, there's no longer a ridge of gravel along the road. It looks like it has been swept off the road. Peterson states he does not know who broomed the area or if P.K. Peterson shoveled it off before he took the picture. It's certainly not there anymore. Referring to Exhibit 3fx which was taken up by mile post 136, Peterson states he has seen this photograph before.
88		Peterson states he cannot read what appears to be a "do not pass" sign around the delineator pole and wouldn't say there was not a do not pass sign in the other photograph. He sees something leaning against the pole. He doesn't know what it is.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	"Do Not Pass" Signs Placed After Accident	Mr. Webster's photograph taken in about the same position as the photograph taken by P.K. Peterson shows in the background the same little hill. That would be Exhibit 57 and 3fx. Exhibit 3fx was taken by Mr. Webster the day of the accident and 57 was taken by Mr. P.K. Peterson the next morning. Peterson is asked what the difference is in these photographs.
89		Peterson does not know if the two "do not pass" signs that appear in the photograph taken the next morning are absent in Mr. Webster's photographs. He does see that the ridge of gravel that appears in Mr. Webster's 3lx is missing from Mr. P.K. Peterson's number 54. Exhibit 3n has a beige color pickup truck in the background.
90		Peterson states he would imagine that's him although he can't see it that well. It does appear that he's wearing the same shirt and hat that he was wearing in the photographs taken on the 8th. The witness is asked to indicate on Exhibit 3n with an arrow where he might be standing.
	Joint Area Or Construction Joint	Exhibit 54 has a piece of paper which Peterson calls a joint area or construction joint which is where the oil and rock are put down and for some reason it's interrupted and then you start up again and the oil and gravel overlap each other and make a bump.
91		When that happens they put down a piece of heavy paper. The paper is put down so that the gravel is not overlapped.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
92		Peterson is not sure whether where he was pointing in the P.K. Peterson photograph was where McCorvey left the road or where the accident occurred or where the joint was, but states they were in the same general area.
	Peterson's Diary Shows Meeting With Griffin And Berry	Exhibit 34 is Peterson's diary which indicates that on August 4th he had a meeting with Curtis Berry, the project inspector, and Richard Griffin, the project engineer.
93	Griffin Said To Chip One Lane At A Time	At that time Curtis Berry and Richard Griffin indicated that they wanted one lane at a time done because Griffin had some reason to keep the traffic off and let it adhere a little bit better.
94	Told To Keep Motorists Off Unbroomed Lane	Griffin told Peterson to do one lane at a time, chip it, roll it, and keep people off of it until evening, then sweep it and break it loose, which means to turn the traffic loose on it.
	Told To Keep Traffic Off Unbroomed Lane All Day	They indicated this to him because there's not supposed to be any traffic on it all day. This entry in Exhibit 34 is for August 6th which is the day before the accident.
99	"Signs Spread Out Thin"	On August 8th in Peterson's diary it indicates "talked to Curtis B." That would be Curtis Berry. It also states that discussion was "about having signs spread out so thin."
100	Inspector Berry Said UDOT Will Try To Get More Signs	Mr. Berry did indicate to Peterson at this time that if he could get more he would get more loose gravel signs. There was no mention of 25 mph speed signs.
101	No Mention Of 25 MPH Signs	Peterson's diagram which appears on Exhibits 35 and 36 does not make a reference to any 25 mph advisory sign.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
103		Peterson moved his operation over to I-70 on the 8th of August. Referring to August 11th of Peterson's diary, which indicates what was done on the project on August 8th, the Friday before, it indicates that he got the outside lane chipped but not completely broomed. This was for the westbound lane that didn't get broomed. Peterson believes the eastbound lane was completed. He did have a lot of trouble that day and he knows he was late sweeping it, but believes they did sweep the outside lane eastbound as far as the chips went.
105	Signs for I-70 Chip Job	Exhibit 37 indicates the signs put in place on Friday morning, August 8th, for the chipping of the eastbound I-70 because they wanted to close that lane while they chipped it.
107		Because they were not finished, he intended to close that lane to keep people off because it was fairly fresh chip.
108	Closed the Lane On I-70 According To UDOT Plan	This was set up for closing lanes when not using the traffic control plan and this was standard. There was no equipment working in the area so the early warners or flag people were not needed but there was a "road construction ahead", "right lane closed", "loose gravel," and then mile after mile of "do not pass" signs. Peterson closed the lane because people are supposed to get over in the left lane and not pass. This was his objective and that's how he hoped to achieve it.
112		Referring to Exhibit 37, Mr. Peterson states he closed the outside lane of Interstate 70 on the evening of August 8, 1986. Coming off the I-15 interchange there was a road construction ahead sign and a right lane closed sign 500 feet ahead of that. 200 feet ahead of that is a loose gravel sign.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
113		<p>There are two loose gravel signs about 500 feet ahead of that on both sides of the road and on the interstate there are do not pass signs.</p> <p>Exhibit 58 is one of the early warners on the project. Peterson believes that these signs are approximately 10 to 11 feet high and approximately 8 feet wide. He does not know how much they weigh.</p>
114	Peterson's Job To Know Contract Specifications	<p>It was part of Peterson's job to know the contract specifications. Referring to the State of Utah Standards and Specifications for Road and Bridge Construction, plaintiff's Exhibit 9, Peterson states parts of this book were part of the contract. He carries this in his pickup but on this project, he had a contract proposal book that he used on the job.</p>
115		<p>Referring to Section 625 of Exhibit 9, Peterson is not sure if that applied to this contract.</p>
116	Exhibit 8, Page 6 Applied State Of Utah Standard Spec- ifications For Road And Bridge Con- struction To Project	<p>Referring to Exhibit 8, page 6, it states, "The State of Utah Standards and Specifications for Road and Bridge Construction, edition 1979, and addendum number 2 of February 1, 1985, will apply on this project."</p>
	Section 625 Required Signing In Accordance With MUTCD	<p>This refers specifically to section 625 and Peterson notes the provision that states, "All signs, barricades, and channeling devices shall be constructed and erected in accordance with the plans and the manual on uniform traffic control devices for streets and highways."</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
117	But Contractor Used UDOT's Traffic Control Plan	Peterson states they were presented a traffic control plan and seal coat plan from the State of Utah and that was the signing safety program they used. Exhibit 10 was what they used when they were doing work on the roadway.
118		Peterson states if they were not using Exhibit 10 they did not have to comply with the Manual on Uniform Traffic Control Devices.
119	No Copy Of MUTCD On Project	Peterson is not sure if he had a copy of the Manual on Uniform Traffic Control Devices on the project with him.
122	Griffin Told Peterson To Close Lane	<p>Peterson thought he heard Mr. Griffin indicate when he testified that he never told Peterson to close the lanes after they were chipped but not swept. Peterson states that's a misunderstanding because he felt like the lane was supposed to be closed during the chipping operations. He thought his job was to keep the traffic off of it as much as possible.</p> <p>Even though Mr. Berry said he never had any discussions with Peterson about closing the lane or any discussions with Peterson about the signs being too thin, Peterson states he did have that discussion with him.</p>
124	Exhibit 59 Photograph Early Warner Being Moved	<p>Referring to Exhibit 59 which is a blowup of Exhibit 3cc, Peterson states they do appear to be the same photograph. This would be one of Webster's photographs.</p> <p>Peterson states there does appear to be a second early warner in the middle of the road on Exhibit 59.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
125		It is not being pulled down the road by a truck but rather it's in the righthand lane. He would not be able to say that it appears that the sign is attached to a truck. He does not think one might conclude that it was attached to a truck by looking at that photograph.
	Does Not Know Who Moved Early Warners	There were two early warners set on the project used that day as far as Peterson can recall. As far as when they were moved, how they were moved or what time they were moved, Peterson cannot answer that.
126		<u>CROSS EXAMINATION BY UDOT:</u>
129		Peterson has testified regarding his desire to keep traffic off the right lane. On the day of the accident the left lane had been chipped a couple of days before on August 5th.
133	Nothing to Physically Prevent Traffic From Entering Outside Lane	After the traffic passed the second early warner located in the righthand lane put there to move traffic off to the left, there was nothing physically preventing the traffic from moving in and utilizing either lane.
143	UDOT Never Told Him About Possible Problem With Signs	Curtis Berry did not tell Peterson that there was a problem with signs on the day of the accident, and as far as he knew, the signs were in compliance at all times.
149		<u>CROSS EXAMINATION BY LEGRAND JOHNSON:</u>
151	Merchant Responsible For Moving Signs	Peterson did have an employee working for him by the name of David Merchant. His responsibility was to shuffle the signs for Peterson.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
152		He was more or less the person Peterson had in charge when it came to moving signs.
161		<u>REDIRECT EXAMINATION BY McCORVEY:</u>
	Early Warner Light To Indicate Early Warner Engine Is Running	Referring to Exhibit 58, there are no holes cut in the panel on the early warner so that you can see lights coming from the opposite direction. The light that appears on the early warner in Exhibit 59 is a safety light to let people know that the early warner's engine is running.
162	In Webster Photograph No Running Light On Second Early Warner Being Moved	Peterson cannot see that there is a light on the second early warner pulled by the truck but can see the light on the first early warner.
		Exhibits 35 and 36 which are the sign diagrams that Peterson prepared on August 8th.
163		They were prepared first thing in the morning on August 8th after he got the project going. He sat down with his notes from the day before and rewrote the diagram.
170		PETER HOLTON IS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF.
		<u>DIRECT EXAMINATION BY McCORVEY:</u>
	Develops Work Zone Traffic Control Plans For UDOT	Mr. Holton works for the Department of Transportation and part of his job there is to develop work zone traffic plans.
171	Also Teaches Course On Traffic Control In Work Zone	Holton also teaches a course for State personnel on controlling traffic through work zones.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Designated To Testify On UDOT Traffic Control Plan	Holton is the person designated by the State to testify about the traffic control plan in effect on this project.
	Relies on MUTCD	Holton relies heavily upon the Manual on Uniform Traffic Control Devices when teaching his course.
172		Holton teaches the course based on the manual because the Department of Transportation has adopted the manual as a standard for the state. This manual was in effect at the time of the accident.
173	Requirements Of Traffic Control Devices	Referring to page 1a-1 which talks about the requirements of traffic control devices and section 1a-2 which states, "To be effective a traffic control device should meet five basic requirements. They are, fulfill a need." Holton states to fulfill a need means there has to be a reason to put a traffic control device or something out of the ordinary for the driver to need further information.
	1. Fulfill A Need	
	2. Command Attention	The second requirement is command attention, which pertains to the size, shape, and color of the device as something that would draw attention to the driver of a need to maybe change his driving pattern.
174		A sign that is laying down in the bushes doesn't do anybody any good.
	3. Clear Simple Meaning	The third requirement is that it must convey a clear simple meaning, which means that a driver doesn't have all day to read a wordy sign so the sign should be kept simple and the message easily understood.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	4.Command Respect Of Road Users	The fourth requirement is command respect of road users, which means the sign must be of such construction and makeup that the driver is not going to just assume it has no meaning. It should look official.
175	5. Adequate Time For Proper Response	The fifth requirement is to give adequate time for proper response. This just means that there must be enough time and distance for the driver to be able to determine what the meaning of the sign is. By the same token you don't want to give them too much distance because they might forget the warning.
	Engineering Judgment Required	Section 1a-3 and section 1a-4 reads, "The decision to use a particular device at a particular location should be made on the basis of an engineering study of the location. Thus, while the manual provides standards for design and application of traffic control devices, the manual is not a substitute for engineering judgment..."
176		The complexity of the project determines the need for the magnitude of the engineering study. It would be fair to say that an engineering study is required but it can vary from project to project.
177	Sign Plan Must Be Based On Good Engineering Judgment	The provision does not indicate someone goes out and puts up a sign at a location, but indicates that based on an engineering judgment, someone decides where to put up a stop sign, they still do it in accordance with this manual.
	Does Not Know If Any Engineering Judgment Involved In UDOT Plan	Holton does not know if any engineering study went into the traffic control plan shown on Exhibit 10x.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
179	Regulatory Signs Are Black And White	<p>Regulatory signs are black and white. The black and white sign shown in Exhibit 59 on a delineator post is a regulatory sign.</p> <p>Those delineator posts are approximately 4-foot high.</p>
	Section 6 MUTCD	Section 6 deals with traffic control through construction and maintenance operations.
180	No Distinction Between Construction/ Maintenance	<p>The manual does not make a distinction between construction or maintenance, but treats the traffic control the same.</p> <p>Section 6a-2 talks about basic principles and indicates, "This part sets forth basic principles and prescribes standards for the design, application, installation, and maintenance of various types of traffic control devices required for road or street construction, maintenance operations, and utility work."</p>
	MUTCD Sets Minimum Standards Of Safety	It goes on to say, "Minimum standards of application are prescribed for typical situations, and for methods of controlling traffic through work areas. As part of these standards a number of typical situations are illustrated, showing the proper application of standard protective devices." The manual attempts to show the minimum standard for typical situations.
181	Never Do Less Than The MUTCD Requires	The manual shows the minimum standard for typical situations and shows you how to sign it. Sometimes you will want to do more than the manual requires. If the situation that is described in the manual is exactly what you have in the field, it would be fair to say you never do less than the manual requires.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
182		Holton would agree with the manual which indicates that anybody involved in maintenance or construction is responsible to implement the traffic control plan under the manual.
	Construction Areas Present Unexpected Or Unusual Situations To Motorist. Thus Special Care Required In Traffic Control	Section 6a-5 talks about fundamental principles. One of those principles is construction and maintenance areas presenting to the motorist unexpected or unusual situations as far as traffic operations are concerned. Because of this, special care should be taken to apply traffic control techniques in these areas.
183	Motorist Will Not Reduce Speeds Unless They Perceive Clear Need To Do So	The manual also indicates that traffic control and work sites should be designed on the assumption motorists will only reduce their speeds if they clearly perceive a need to do so.
184	Motorists Should Be Guided	The third basic principle says, "Motorists should be guided in a clear and positive manner while approaching and traversing construction and maintenance work areas." Holton would agree with that statement as well.
	Positive Guidance	Positive guidance is a concept that has been taught throughout the highway departments as a means of leading motorists not only through construction but through any type of driving activity. It's done in a positive fashion rather than a don't do this or don't do that fashion.
185	There Should Be No Choice Left To Motorist	Holton states he wants to take the motorist by the hand or by the ear or by the nose and lead him right through the way he wants him to go. He wants there to be no choice because the motorist may choose the wrong action.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Should Be Trained People In Charge Of Traffic Control	The fourth principle says, "To ensure acceptable levels of operation, routine inspection of traffic control elements should be performed. Individuals who are trained in principles of traffic control should be assigned responsibility for safety at work sites."
186		Holton agrees that there is a need to have trained people in charge of traffic control. The manual goes on to say, "Only those individuals who are qualified by means of adequate training in safe traffic control practices and have a basic understanding of the principles established by applicable standards and regulations, including those of the Manual on Uniform Traffic Control Devices, should supervise the selection, placement, and maintenance of traffic control devices in maintenance and construction areas." Holton states that is a way to say people should be trained who are in charge of traffic control.
187	Channelization	Section 6c-1 talks about barricades and channelization devices. Channelization is generally reflective, most often orange and white in color, and used to transition traffic from one path to another.
188	<u>Shall</u> Is Mandatory	Section 6e-7 discusses the use of early warning signs and reads, "Necessary signs, barricades or other traffic control devices shall be used in conjunction with the advanced warning arrow panel." <u>Shall</u> is mandatory.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
189	MUTCD Says Early Warner Shall Be Preceded By Some Kind Of Channeling	The Manual on Uniform Traffic Control Devices recommends that placement for an early warner is in the middle of the lane. There are a couple of illustrations. In those illustrations, it is also always preceded by some kind of channelization device either cone or sawhorse or barrel.
190	Does Not Know Of Any Manual Allowing Placement Of Early Warner In Middle Of Highway	Holton does not know of any manual that says to put early warners in the middle of the freeway lane with nothing ahead of them.
193	MUTCD Shows Typical Application Of Traffic Control For Maintenance Operation On Freeway	Exhibit 39 says a typical application for daytime maintenance operations on a 4-lane divided road where half of the roadway is closed shows the first sign to be road work one mile, mounted on both sides of the highway. The second sign at the half mile location is right lane closed one-half mile, again signs on both sides of the highway. The third sign is lane width transition on both sides of the highway indicating that the right lane is to go out of service at this point. Beyond that is the taper of devices whether it be cones or some kind of channelizing devices established by the speed and the width of the road being closed.
194		The distance between those signs would be between a mile and a half a mile. The early warner would be located in the middle of the lane being closed behind the cones. Again, this is for a typical daytime maintenance operations on a four-lane divided road.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Holton did look at the traffic control plan both drawn for this project and how it was actually put into effect at the time of his deposition, and this was discussed. How the plan was drawn was Exhibit 10 to his deposition.
195		<p>He also recalls looking at Exhibit 35 which is the actual plan supposedly in place on the day of the accident.</p> <p>Exhibit 35 is a diagram made from Mr. Peterson's, the superintendent, notes of the signing that was in place on the day of the accident. Exhibit 10 is the paper plan that was supposed to be in place.</p>
196	<p>UDOT Plan Not Effective To Close Lane</p> <p>Motorist Will Take Open Lanes</p>	<p>Referring to Exhibit 35 which is the diagram made by Mr. Peterson, Holton believes this placement of early warners would not be effective to close the lane south of the early warner. Once drivers are beyond the device and the lane appears open to them, most motorists will assume that there is no further need to stay out of that lane. If you give a motorist an open lane, he or she will take it. If you intend to close a lane you've got to close it or use positive guidance.</p> <p>Holton did indicate during his deposition that traffic control plans are only as good as the people in charge of putting them into place.</p>
197	<p>Never Has Seen "Do Not Pass" Signs Used In This Manner</p>	<p>Holton also indicated that if your people are no good, then your plan is no good.</p> <p>Holton also discussed during his deposition the use of "do not pass" signs on this project, and the fact that there were do not pass signs on both sides of the road for mile after mile after mile ahead of the construction area.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
198		Holton has never drawn or reviewed a plan that uses do not pass signs in this fashion before on any traffic control plan he's been involved in.
200		<u>CROSS EXAMINATION OF HOLTON BY UDOT:</u> Holton did not design the particular plan that was in use during this chip seal project. He never talked to the engineer that designed it. In fact, he does not know who designed it.
215		<u>REDIRECT EXAMINATION OF HOLTON BY McCORVEY:</u> Identifies "Do Not Pass" Sign Leaning Against Delineator Pole Holton has read a lot of depositions and looked at pictures regarding this project and the signing involved in this project. One of the pictures he looked at was Exhibit 3ex which is looking down the mountain. There does appear to be a sign in the grass.
216	Sign In Grass Does Not Command Attention	This sign in the grass does not command a lot of attention or any respect from the motorist. Holton did read the part of Mr. Merchant's deposition where he indicated that the right lane closed signs were put down in the ditch where people couldn't see them. If those right lane closed signs were in the ditch before the accident, they didn't command much attention from the motorists.
217		If those signs were in the ditch and if in fact the right lane closed signs were not up, then, as implemented, this was not an adequate traffic control plan.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
218	Hard To Drive By Early Warner And Not See It	Holton would have used some kind of channelizing device. The early warning devices are very large and it would be hard to drive by one and not see it. Referring to the manual, section 6, dealing with construction and maintenance, it does not indicate anywhere that this only applied to long term projects rather it just says construction and maintenance, short term, long term, the manual governs it.
221	Speed Limit On Project Was 25 MPH	Holton is aware that Mr. Berry testified that the speed limit through the project was 25 mph.

SUMMARY OF TRIAL TRANSCRIPT FOR NOVEMBER 14, 1990 (R. 3002)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
3		ERNEST KLEIN IS CALLED AS A WITNESS BY THE PLAINTIFF. <u>DIRECT EXAMINATION BY McCORVEY:</u> Ernest Klein lives at 430 Madrid Avenue, Torrance, California.
	Accident Reconstruction Engineer	He is a research engineer which means he is an engineer that applies scientific methods to the analysis of a particular field, his being accident reconstruction.
4		He's been doing this for 12 years, and has analyzed and reconstructed nearly a thousand accidents. He has analyzed head-on collisions, side impacts, roll-overs, and rear-enders.
7		Klein has been asked to look at the accident and evaluate it to reconstruct it based on the information available, and determine what the factors and conditions were that caused this accident.
9	Prepared Exhibits	Klein has prepared some exhibits at the request of plaintiff's counsel. Exhibit 60 is an exhibit of the accident scene.
11		Exhibit 60 includes 8 photographs Klein has taken for illustrative purposes to show some of the markers that he has placed on the road which he will utilize later in his reconstruction.
12	Accident Scene Analysis/Exhibit 60	Exhibit 60 is received for limited purposes and that is as illustrative of the expected testimony of the witness. Klein also prepared an accident scene analysis from the photographs taken at the time of the accident.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		<p>The purpose of an accident scene analysis is to study the early photos that were taken shortly after the accident. The purpose of the exhibit is to study and learn from them what the various features show.</p> <p>OLSEN moves for the admission of Exhibit 61.</p>
16		<p>Exhibit 61 is received into evidence. The photographs on Exhibit 61 depict the conditions that were there at the time of the accident. Referring to the upper left photograph.</p>
17	<p>Exhibit 61 - Mound Of Gravel/Thick Gravel Areas</p> <p>Discussion Re: Exhibit 61 Showing Tire Marks In Thick Gravel</p>	<p>In that photograph on the left side which is the inbound lane or inside lane near the median Klein sees several things. He sees a mound of gravel on the left side near the shoulder, a tire mark in that mound of gravel which tells him that in some areas of the inbound lane there was less gravel on the road and in some areas there was thick gravel. It was so deep that when a vehicle traversed over it, it actually left a tire mark on top of it.</p> <p>Klein can also detect longitude in old gravel lines that are left by thick gravel on the road. There were actually marks left near the edges where the tire contacted the gravel. Klein points out the Honda direction of travel.</p> <p>The next photograph is the center on the left. Klein points out the dark end tire tracks in the newly rechipped surface, and also points out the direction the Honda took.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
18		<p>Moving to the lower photograph on the left side, again Klein points out the Honda direction of travel. This photograph also points out the loose gravel at the edge and shows that in some locations it actually peeled over near the edge of the asphalt.</p> <p>Moving to the next photograph which is center top, this indicates the Honda at rest position. It also shows the tire tracks that were left by the left front and left rear just prior to the trip.</p>
19		<p>The next photograph in the center shows some contact location where the Honda actually hit the ground as it was rolling. The next photograph shows the vehicle at rest, the speed limit sign, which is 55 mph, some debris, the sun roof and some impact locations.</p>
	Exhibit 61 Important Photograph Showing Gravel And Debris Being Thrown By Passing Vehicles	<p>The upper photograph on the left side shows the lane from which Mr. McCorvey was coming, traveling toward him. Again, it illustrates the amount of gravel on the median side as the vehicle in the median was stopped. The photograph on the right side of Exhibit 61 shows a van and a truck that are leaving a large trace behind them of gravel being thrown up into the air. He believes this picture is very important.</p> <p>The last photograph shows the Honda at rest position.</p>
	Point of Rest Analysis Exhibit 62	<p>Klein also performed a point of rest analysis, again with the set of photographs that he has used to determine where and how the vehicle came to rest.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
22		Klein also prepared an exhibit of the damages done to the Honda, which is Exhibit 63.
24		Klein prepared Exhibits 66 and 67, a drawing with some overlays after visiting the scene regarding what happened at the scene. With this drawing Mr. Klein will demonstrate his judgment as to what happened.
25		The purpose of Ex. 66 was to lay the foundation of the road, the width, longitudinal dimensions, so that Klein could plat the locations that the officer measured to be able to tie it into the road and to then tie it into his reconstruction as to how the vehicle rolled.
26	Speed of Vehicle When Left Roadway Was Between 52 And 62 MPH	Exhibits 66 and 67 are received into evidence. After all of Klein's preparations, drawings, photographs, and viewing of the officer's report, he was able to determine the speed of the McCorvey car as it left the roadway was between 52 and 62. There is no way to be more accurate than that. Klein is allowing for a range of maximum and minimum.
29	Exhibit 3kx Showing Mounds Of Gravel	Referring to the exhibits which show actual mounds of gravel, specifically Exhibit 3kx, Klein states this does have an effect on a car traversing the roadway.
30	Gravel Produced Induced Steer Which Caused Accident	Klein states this illustrates the right lane which is the unswept lane which contains an inch or more of gravel, both on the right lane and near the median on the left lane. If you have a vehicle that is traveling down the road and the left wheels touch the gravel, they are being slowed by the gravel. This causes the vehicle to act in what is referred to as induced steer. The center of gravity of the vehicle is near the center. If you

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Same Principal Used To Steer Tanks	slow the left side, the vehicle will move into a counterclockwise yaw or counterclockwise spin. For example, in an F60 tank if you slow down the left side you turn toward the left.
		So the effect of gravel is basically to slow down the side of the car or tires that hit the gravel. It's different than braking because only the side that hits the mound of gravel will slow down.
31	Hitting Gravel With Left Front Wheel Forced Honda Into Median	A vehicle traveling down the road that hits this mound of gravel on the left side will be forced to go towards the median by what is called induced steer. For example, if you're driving down the road and it has just rained recently and there is water on one side and you hit the water, you will feel some steering input. That is called induced steer. This is very important to this accident.
32		The physical evidence shows that there was a steering input when the vehicle was in the median area, and the driver wanted to return toward the road. He did put in a steering input by steering left. There were tire marks which left a clear indication. Referring to Exhibit 61, lower left photograph, there are tire marks which clearly illustrate that there was some steering input to bring the vehicle back toward the road.
	McCorvey Acted Reasonably In Trying To Steer Back On To Highway	Klein does not think the steering input was unreasonable, and in fact, under emergency conditions such as this when you have left the roadway for whatever reason and you want to get back up onto the road, it's a very reasonable reaction.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
33	Confusing Signing Also Contributed To Accident	Klein does not think that Mr. McCorvey purposely drove off the road. Besides the accident reconstruction, the excess gravel and the conditions of the road, Klein feels that there was confusing signing that contributed to the occurrence of this accident. There seemed to be some chaos within the construction area near the time of the accident. Analyzing and evaluating what the various drivers did or knew or how they reacted, it tells an accident reconstructionist the net result.
34	Motorists Were Not Told How To Drive Through Construction Area	The drivers were not told how to drive through this construction area. There were mixed arrows and mixed directions. There were 55 mph signs and some 25 mph signs. Some of the drivers drove on the unswept portion of the roads at speeds of 55 and others drove on both areas at 25 and 35.
35	No Traffic Control	The construction area was not controlled. There was no one telling these drivers what to do or which lane to drive in. There was no one telling them what speed to drive, and because of the confusion, they reacted the best they could. These conditions were created by the contractor that did the job in this construction area.
36	Drivers Acted To The Best Of Their Ability	Klein believes that all of the drivers on the road on the day of the accident believes that they were reasonable. They acted to the best of their ability.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Cause of Accident Lack of Positive Guidance/Mounds Of Gravel And Lack Of Traffic Control	They were frustrated and angry because no one said what was reasonable on this road. The contractor didn't tell these drivers what to do, so each of the drivers interpreted his own reasonableness. Klein believes the cause of the accident that put McCorvey in the wheelchair was the lack of positive guidance. The lack of clear marking and control of the road, and the mounds of gravel that caused McCorvey to drive off the road.
37		The gravel shown on the left just off the road caused the induced steer that started the events that eventually caused McCorvey to end off the road.
38	Which Signs Were In Place	There has been much testimony as to which signs were in place. Klein has looked at Mr. Peterson's diagram and Mr. Webster's photographs. Klein has created Exhibit 65 from Webster's photographs which is a signing analysis.
40	Points Out Hazardous Gravel Shown In Photographs	Klein has 6 photographs on Exhibit 65 with black lines and orange arrows to illustrate the direction to be followed when looking at the board. Klein has also indicated on the photographs where there are tracks in the gravel on the road. On the upper left photograph you can lift the overlay and see those tracks. These tacks are hazardous to traffic on certain conditions and that's why he's pointing them out.
41	One Inch Of Gravel Sufficient To Pro- duce Induced Steer	Under the conditions that prevailed on this road for this accident, Klein believes an inch or more is sufficient to cause the phenomenon of induced steer.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
42	Exhibit 238 Shows Tab With 1-1/2 Inches Of Gravel On Road	Klein believes there was an inch to an inch and a half of gravel on this road. Referring to Exhibit 238 which is a tab. There is a photograph that shows one of these tabs with approximately an inch and a half of gravel on the road where it is located. That is Exhibit 31x.
43		Klein does have a judgment as to the movement the car would make if viewed from the rear and it went into an induced steer based on his experience as an accident reconstructionist.
47	Induced Steer Would Look Like Fish-Tailing To Observer	<p>It would look like fishtailing. Mr. Villarreal described that sort of fishtailing in McCorvey's vehicle.</p> <p>If someone testified that this accident was caused by driver inattention, Klein would say accident reconstruction is a scientific method or systematic method and if the various aspects that an engineer needs to take into account are examined, he will see that the cause of this accident is the extremely hazardous conditions that prevailed.</p>
48	Areas To Consider To Reconstruct An Accident	The areas that an accident reconstructionist needs to consider are the following: mechanical, which would be a mechanical failure of the brake system of the car or failure of the steering system; second, would be environment, which would be highway conditions whether it be daylight or nighttime, snowing or raining; the third area would be human factors, and that is how does the driver react. If Klein looks at these three areas, he can determine what the physical evidence was that prevailed on this road at this time.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
49	Environment Involved	There is environment involved in this accident because of the condition of the highway and the gravel on the road. There are photographs that illustrate it.
	Human Factors	There are human factors involved in this accident. The drivers all reacted differently.
51		The condition on the road created extremely hazardous conditions for these drivers to respond under. Everyone was trying to respond in a different fashion.
	McCorvey's Inattention Did Not Cause Accident	Based on the control conditions, the positive facts point toward the extremely hazardous conditions of the road and no physical factors point to Mr. McCorvey, and that's the reason Klein believes it was the construction company that created this condition that caused the accident as opposed to Mr. McCorvey's inattention.
52		Klein states inattention is synonymous with monotony. If a driver drives down the road and nothing's going on, the mind starts to wander and you have inattention. On this road there was gravel flying, drivers trying to restrict others from passing, anger created between the drivers. Shouting and hollering at each other for breaking the windshields which shows Klein that McCorvey was actually driving.
53	A Lot Of Gravel Struck McCorvey's Honda	The conditions did not create a situation where you would be inattentive and just drive off the road. There was a lot of gravel hitting his windshield, his vehicle, his car, and so this was not monotony.

CROSS EXAMINATION BY UDOT:

<u>Page</u>	<u>Issue</u>	<u>Description</u>
55	Angle at Which Car Left Road Means McCorvey Could Not Have Been Driving Faster Than 65 MPH	Klein's opinion as to how fast McCorvey was going was a conservative range. He does not think that McCorvey could have been going any faster than 65 mph when he left the road. The angle at which he left the road was somewhere between 4 and 10 degrees. McCorvey was in the left lane when he left the road.
58	McCorvey Trapped	Klein has spoken with Mr. Ed Ruzak in preparing for this case and doing his analysis. He is aware of Mr. Ruzak's opinion that McCorvey was trapped on this road.
	Marked Exhibit 17	The witness is asked to indicate on Exhibit 17 where he believes Mr. McCorvey was trapped, and does so with an X.
59		Klein believes he was trapped right at the point where his car left the road.
60		Klein marked plaintiff's Exhibit 17 to indicate where there was work going on on the day of the accident.
63		The witness is referred to McCorvey's deposition where he indicates McCorvey describing the road as being too slick. This specific reference would be page 31.
64		"And I just tried to stay with it. I almost recovered it, but it was just too slick. It was akin to an ice rink with ball bearings on it, and I don't think anybody could have driven through that."
65	Road Was Unstable	Klein states his opinion is the road was unstable, and McCorvey describes it as slick. That is McCorvey's way of describing what he felt. When he fishtailed, he felt that the road was slick.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
67	McCorvey Encountered Emergency Conditions In Median	It was steering input that caused the roll to occur inside the median. He would term the steering input significant under the emergency conditions that Mr. McCorvey was under.
	Other Actions McCorvey Could Have Taken	Klein did indicate in his deposition that if McCorvey had applied his brakes and maintained a straighter direction, he could have stopped.
68		Klein does not feel that braking was an appropriate emergency response under those conditions. Klein does not feel that it's appropriate to judge someone's reaction in those conditions.
	McCorvey Reacted The Best He Could	Slowing down could be an appropriate response if you could manage it. These kinds of conditions are very frightening, and unless the driver knows what he's doing, he could not be able to decide what to do. The drive reacts the best he can, and that is how McCorvey reacted.
<u>CROSS EXAMINATION BY LEGRAND JOHNSON:</u>		
84	Must Correctly Sign Project To Prevent Accidents	If there had been appropriate signing, there would have been a reduced chance that Mr. McCorvey would have lost control of his car. He does not think it's a question of more or less, but rather appropriate. Just to put signs on the road does not take care of the problem. You have to do it right.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
86	No "No Passing Signs In Websters' Photographs Webster Photographs Show No "No Passing" Signs	Klein is aware of the allegation that McCorvey drove past 22 "no passing" signs. He knows that Mr. Webster took photographs of the signs and believes that if those 22 signs had been there, there would have been at least 5 or 6 of them show up in the photographs. There are no "no passing" signs in the photographs taken by Webster. The photographs are physical evidence. Klein is not accusing Mr. Peterson of putting signs on his diagram that were not there, he's just stating that the physical evidence indicates that there were not 22 signs, and in fact the signs that were there were photographed. There were no "no passing" signs photographed.
88		Klein does not think there are 2 other photographs that show early warners in the outside southbound lane taken by Mr. Webster.
89		Referring to Exhibit 59, Klein states he cannot identify the photograph as having a second early warner in it.
90		Exhibit 240 is received into evidence. Exhibit 240 shows the first early warner. That photograph also shows something that one could speculate was a second early warner, but not necessarily from this photograph.

SUMMARY OF TRIAL TRANSCRIPT FOR NOVEMBER 14, 1990 (R. 2999)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
19		VAUN PAUL PAGE IS CALLED AS A WITNESS BY THE PLAINTIFF. <u>DIRECT EXAMINATION BY McCORVEY:</u>
20		Page lies at 769 East Shady Lake Drive in Salt Lake City, Utah. Mr. Page last walked on August 7, 1986.
21	No Drugs Or Alcohol Consumed By Page Or McCorvey	On that date in the afternoon he was with Mr. McCorvey. He had not taken any drugs and did not see Dan McCorvey take any drugs or drink any alcohol that day.
22	Does Not Remember Accident, Except For Gravel Hitting McCorvey's Honda	All Page remembers of the accident is that they stopped in Nephi to get something to eat and fill up at the gas station at which point he offered to drive. McCorvey indicated he would drive to Las Vegas. Page went to sleep and vaguely recalls hearing the gravel hit the car but does not remember anything else until 3 days later in the hospital.
23	Page Had Broken Back And Ankle, Arm Almost Severed From Body And Lost 9 Teeth In Accident	Page fractured his neck and shattered lumbar L1 through 3. A herringbone rod operation was done by Dr. Dunn. His right arm was almost completely cut off and a plate was put in it. It also had 6 screws in it and it's still numb although it is functional. His left ankle was broken and it has a lot of screws in it and does not move. He lost 8 or 9 teeth and had to have a lot of dental surgery.
24	Does Not Remember Ambulance People Nor Speaking To Them	Page does not remember being worked on by ambulance person named Lee Beaumont.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Counsel asks that the deposition of Mr. Beaumont be published at this time. Referring to page 9 of Mr. Beaumont's deposition, Mr. Beaumont indicates that while he was at the scene of the accident working on Page, Mr. Page indicated to him, "I came upon some cars too fast, tried to pass on the left, and lost control of my vehicle." Page does not recall saying that to Beaumont.
25		Page was not driving.
		<u>CROSS EXAMINATION BY UDOT:</u>
27		Page does not recall Beaumont giving him any perception or ability tests. He does not recall anything after going to sleep and hearing some noise until he woke up in the hospital.
28		<u>CROSS EXAMINATION BY LEGRAND JOHNSON:</u>
		Page was a passenger in the right front seat of the Honda.
29	No Recollection Of Signs. Heard Noise & Gravel	He does not recall seeing any signs in the construction area but does have recollection of hearing a lot of noise and gravel.
33		EDWARD RUZAK IS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF.
		<u>DIRECT EXAMINATION BY McCORVEY:</u>
		Edward Ruzak's business address is 10061 Talbert Avenue, Suite 200, Fountain Valley, CA.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
34	Traffic Engineering Consultant	<p>Mr. Ruzak is a traffic engineering consultant. He has a bachelor of science degree in civil engineering from the University of Illinois.</p> <p>Mr. Ruzak's work experience goes back to the 60's where he worked for the California Division of Highways in design and traffic engineering inspection.</p>
39	Evaluated Traffic Control On This Project And Whether It Caused Accident	<p>With respect to this case, Ruzak was asked to investigate the conditions with respect to the traffic control zone on I-15 and to give opinions with respect to what he felt was the reasonableness or unreasonableness of that particular control situation. He was also asked to look at whether that reasonableness or unreasonableness was the cause of the accident from the engineering standpoint.</p>
40	Ruzak Made Certain Assumptions In Formulating His Opinions	<p>Ruzak made assumptions regarding the situation of the work area on I-15 near Cove Fort on August 7, 1986. One of these assumptions was that the speed limit was 55 mph.</p>
41	Assumed Speed Limit Was 55 MPH And That Early Warners Were In Place	<p>Ruzak also made an assumption that there was an advisory speed sign on one early warner that was at least shown to the users if they saw it and perceived it. For purposes of his opinion, Ruzak has been asked to assume that that early warner was in fact in place.</p>
	Assumed Excess Gravel On Road	<p>Ruzak also assumed that there was gravel on the road. He assumed that the shoulder lane or slow lane was unswept and that there was loose gravel or excess gravel on that area. He also assumed that the inside lane or fast lane had been swept and there was excess gravel on that lane at various locations.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Assumed Unbroomed Lane Open	Ruzak assumed that the outside lane was open.
42	Assumed Contractor Intended Lane To Be Closed/State Intended It To Be Open And Driven At 55 MPH. Assumed One 25 MPH Advisory Speed Sign	Ruzak also made assumptions regarding the contractor's intention to close the outside lane to traffic before it had been swept. That assumption was that there was a right lane closed sign and the contractor did intend to have that lane closed simply by the use of that sign. He believes that the State intended that lane to be open and have the 55 mph free flow.
43	Believes The UDOT Traffic Control Plan Caused Or Contributed To Accident	If Ruzak were to assume that the signs shown by Mr. Peterson on Exhibit 36x were in place at the time of the accident, this plan was inadequate to provide any clear and concise information to the users of that particular facility in order to assist them in their guidance and their navigational tasks through the area. Ruzak believes that the inadequate plan did cause or contribute to the accident suffered by Mr. McCorvey.
45	Believes Unbroomed Lane Must Be Physically Closed Otherwise Cannot Control Motorists	It is Mr. Ruzak's experience as a traffic engineer that when a motorist sees a sign indicating right lane closed, they expect to see it physically closed so they cannot get into it. If it is not physically closed, motorists will use the lane. It is difficult to control the motorist in an open flow situation, but in a construction work zone, it can be done.
46	UDOT Sign Plan Gave Conflicting Messages To Motorists Which Resulted In Confusion And Chaos	Ruzak believes that the signs allegedly in place at the time of the accident gave conflicting messages. There was confusion and chaos with the way people would operate with the set of messages that were there. The speeds indicate 55 mph because the lanes were open that is what people are going to travel. Even though the signs were saying not to pass, people were passing.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
47	Do Not Pass Signs Of No Use Because Both Lanes Open To Traffic	The do not pass signs did not work because there was the ability to pass. The lane was open so people could get into the right lane.
	No Control of Situation. Much Confusion Due To Contractor Wanting Traffic To Slow Down While UDOT Wanted Motorists To Drive 55 MPH	There was an early warner indicating loose gravel and 25 mph sign but there was nothing to amplify that early warner. Ruzak believes the intent of the State was to continue people at 55 mph while the contractor wanted to slow them down so there was a confusing situation to the motorists. There was no control.
49	Both Lanes Wide Open With Posted 55 MPH Speed	Ruzak indicates the lane was closed and motorists were not supposed to pass but there were wide open lanes. There was loose gravel with 55 mph signs on unswept lanes.
	All Motorists Thought They Were Doing The Right Thing	Ruzak would expect motorists to respond exactly like they did. Everyone thought they were doing the right thing. They all interpreted whatever they thought was right but they were all doing something different.
50	Positive Guidance Needed To Eliminate Hazard	Ruzak believes that there should have been something done on this project to eliminate the safety hazard discussed so far. He would have looked at the guidelines, the standards in the manual and done more channelization to provide the positive control and positive guidance. The manual gives a typical figure which is shown in plaintiff's Exhibit 39 that indicates more positive guidance aspects. Ruzak believes a transition sign which showed that the lane was going to be closed should have been in place. There should have been devices to taper the motorist over so that the motorist did not have access to the construction area with plenty of time to maneuver and less friction with other motorists who might
	Channelization Needed	
	MUTCD Traffic Control Plan Should Have Been Used On This Project	

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		still be trying to pass. Those cones should have gone all the way past the area where the work was being done. In this case it should have gone beyond the work being done at Cove Fort interchange because the outside lane was unswept and there was still work being done.
52	Must Keep Motorists Out of Unbroomed Lanes	The idea is to keep people out of the unswept lane and to control them in single file possibly 3 or 4 miles into an area that is swept.
54		The jury is retired from the courtroom and the following proceedings were had.
	Video Tape	McCorvey's counsel discusses a video taken near Santaquin, Utah which shows an example of what Ruzak believes should have been done on this project.
55	Exhibit 70	The video is marked as Exhibit 70 and viewed by the COURT .
61	Indemnity Agreement	McCorvey's counsel indicates to the COURT that he would like to revisit the issue of an indemnity agreement between the parties. It has come to counsel's attention that Mr. Klein had a conversation with Randy Hunter of UDOT about an indemnity agreement wherein Mr. Hunter indicated there was in fact such an agreement. Mr. Hunter indicates to the COURT that Mr. Klein did ask if there was an indemnity provision in the LeGrand Johnson contract and that Hunter told him that there was.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
63		McCorvey's counsel indicates that if there is an agreement to indemnify UDOT, whether it is a contract or otherwise, a lot of liability can be put on the State which reduces contractor's exposure and the State can walk out with a \$250,000 cap for which the contractor would then indemnify them.

SUMMARY OF TRANSCRIPT SUMMARY NOVEMBER 15, 1990 (R. 3000)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
13		RUZAK CONTINUED.
17	McCorvey Trapped In A Dangerous Condition That Could Have Been Better Controlled	Ruzak did indicate in his deposition that McCorvey was trapped. If he were to refer to plaintiff's Exhibit 17 , he states he could not indicate on that exhibit where McCorvey was trapped but rather would say he was trapped from the minute he was put in the situation where he had to be confronted with another car on the right and operate in that dangerous condition with gravel flying all over the place and having to make maneuvers. He was in a construction zone and trapped in this dangerous condition that could have been controlled better.
18		Ruzak believes the trap situation began at mile post 137 and proceeded through and passed Cove Fort up to the time of the accident.
26	Right Lane Should Have Been Closed	Ruzak believes that the right lane should have been physically closed at the point McCorvey had his accident as well as through the Cove Fort section.
27	Signing Created Hazardous Condition	Ruzak feels that lane should have been physically closed because of the road condition. From his engineering position there needed to be positive guidance for the user and stringent control. The signing that was there did not allow that to be done and created the hazardous condition.
	Presence Of Gravel Required Lane To Be Closed	It needed to be physically closed because of the chips and because that would then allow an engineer to control the traffic through that zone and give them guidance to reduce the potential for accident.
33	UDOT Created Chaotic Conditions For Motorists	Since the right lane where the accident occurred was not physically closed, either lane was available to traffic. Because of the confusion or chaos going on during this construction chip seal operation, everyone thought they were doing the right thing and acting reasonably.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
37	Assumed For Purposes Of Opinion That All Signs Were Up And In Place	Ruzak has assumed for the purpose of his opinions that this particular signing and the early warners had been up for quite some time in advance of the drivers going through.
40	Unbroomed Lane Must Be Physically Closed	Ruzak does not believe that because motorists might encounter chips from point to point that might be a reminder as to why there were do not pass signs. The fact that the road is open allows the driver to perceive that he can use both of the lanes. He may have a perception that the gravel could bounce and ding his car or perhaps hurt his windshield or even throw him into an accident but that will not prevent him from not passing because the road is still open.
41		<u>CROSS EXAMINATION OF RUZAK BY LEGRAND JOHNSON:</u>
46		When Ruzak has a contractor working in Hermosa Beach he anticipates that that contractor will follow the traffic plan that's approved. He can modify that at the direction of Ruzak or the director of public works.
47	Lane Should Have Been Coned Off As Provided In MUTCD	Ruzak does not believe that Mr. Peterson would have had to go to the engineer for the State of Utah to get permission to cone off the entire roadway because that was not a major change. That was what should have been done initially because that was a mandate of the special provisions of the MUTCD.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
48	Contract Specifications Indicate To Follow MUTCD In Signing Project	The contract specifications indicated, "You shall follow the uniform manual." It goes on to state that a layout of the situation typically demonstrated in plaintiff's Exhibit 39 says, "In applying those standards, that those standards are minimum desirable standards. And that additional protection must be provided where there's special complexities and prevailing hazards."
	UDOT Should Have Closed Unbroomed Lane	Ruzak believes the contractor and the State should have looked at chip seal, which is excess gravel and broken windshields, and would be a prevailing hazard and a special complexity, which allows the contractor to cone off that particular area that has not been broomed.
49	MUTCD Should Have Been Utilized	Ruzak believes that the special provisions of contract indicate that the project would utilize the MUTCD.
55	UDOT Also Responsible For Motorist Safety And Signing	Safety responsibility of both the contractor and the State. It is true that the State could have gone to the contractor and told him to take down the Do Not Pass signs or put up the Do Not Pass signs, and he also could have told him to make an adjustment on the location of the signs.
57	Contractor Expected To Follow Traffic Control Plan Provided By UDOT	A contractor is expected to follow a plan given to him by the State.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	MUTCD Sets Forth Minimum Desirable Standards Of Traffic Control.	It would not be totally correct to say that the MUTCD indicates it's only a suggestion and an engineer can look and see if he wants to follow a plan in a particular situation and follow it or minimum desirable standards and when additional protection must be provided is when there's special complexities and prevailing hazards.
	MUTCD Requires Additional Protection If Special Complexity Or Hazards	
58	Gravel Was Hazard Requiring Additional Protection	The fact that there's excess gravel on the roadway which defendants admit will be there and Ruzak admits has to be there, there's a prevailing hazard. Additional protection must be there which puts the responsibilities from the engineer to indicate that more things need to be done to protect the people.
59	McCorvey Trapped By Condition	Ruzak states he believes McCorvey was trapped. He had to go forward and he does not feel that this was erratic. If he had not pulled forward he would have been pummelled with the large van in the lane that was unswept. If he pulls back, there is potential for loss of control or if he pulls to the left to get away from the van, he goes into the area that has not been swept.
60	McCorvey's Actions Reasonable	Ruzak does feel that one option that was reasonable was for McCorvey to try and keep ahead of Mr. Wright because he's going to get pummelled if he goes back. If he goes left, he's going to lose control because of the excess of chips that are on the windrow on the edge of the shoulder.
	McCorvey Could Not Avoid Trap	Ruzak believes that McCorvey was in a trap situation no matter what he did and whatever he did he was trying to avoid the trapped situation.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
61	Same Conditions Responsible For Death Of Young Girl On I-70	He's also giving testimony as to why the similar configuration of this type of plan also killed a girl on I-70. This is a hazardous, dangerous condition because the plan failed to look at all the standards and the conditions available to the users. The accident on I-70 involved a girl with the same conditions. No control or positive control of her maneuvers by keeping her in one lane.
63		<u>REDIRECT EXAMINATION OF RUZAK BY McCORVEY:</u>
64	Should Have Closed Unbroomed Lane And Warned Motorists	If Mr. Ruzak were to assume that the State told the contractor to close a lane until it had been swept, he would expect the contractor to do that. It is clear in the MUTCD that the motorist will drive what he feels unless he is controlled. He will take the options that he has and that is the entire premise of positive guidance to the motorist, stringent control so that these errors cannot happen and that accidents are reduced. A motorist expects to be warned in construction zones. He must be warned.
65	Motorists Should Be Told How Fast To Drive	Ruzak would not recommend that you not tell motorists how fast they should drive in a given condition. If the conditions are acceptable they can drive at the maximum limit that is required by the State. If they are unacceptable he would expect the contractor for the State to remediate that in accordance with the guidelines and standards that are available so it is safe for the user.
66	Positive Guidance Needed For Chip Seal Project Because Of Hazard	Positive guidance does not go out the window in a chip seal operation. There is a hazard of rocks which is not a nuisance but a potential for accident. Guidance and strict control is needed.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
<u>REDIRECT EXAMINATION BY McCORVEY:</u>		
68	Standard Specifications Do Not Allow UDOT Or Contractor To Open Unswep Lane To Traffic At 55 MPH	The provision does not tell the contractor to open up the road to 55 mph before it is swept.
98		JUDY MALLORY IS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF.
<u>DIRECT EXAMINATION BY McCORVEY:</u>		
	McCorvey's Fiance	Mallory has known Daniel McCorvey for eight years. She is his fiancee, and has been his fiance for about five years.
99	Psychiatric Nurse	Mallory is a psychiatric nurse at Charter Summit Hospital. Her duties are to dispense medications and talk to the patients. She is the nurse in charge. She works with adolescents and children who are disturbed. She works approximately 8-1/2 hours a day, 40 hours a week.
100	Prior to Accident McCorvey Happy Person	Prior to the accident, McCorvey was bright, happy and friendly. He loved to participate in sports. He was a cyclist, flew planes and scuba dived. They enjoyed dancing together. He had lots of friends. He was a wonderful man. She would describe him as a proud person. He had lots of friends before the accident, but not so many now.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	McCorvey Now Hopeless	Now he is hopeless. He is in a great deal of pain all of the time, emotional and physical pain. He has very little self worth, and no will to live. He has talked of suicide numerous times. He sleeps a lot, and has sleep disturbances. He does not eat right, his appetite is poor. He's not the same man Mallory used to know.
101	Live Together But No Intimacy Or Physical Love	She and McCorvey live together and share a bed, but there is no physical love. They hold hands, but have nothing really intimate.
	Helps With Care	Mallory helps McCorvey with a lot of things, such as his hygiene and bathing. He cannot get in and out of the bathtub by himself, so she helps him in. She helps him from the wheelchair into the tub, and it's very difficult to get him out.
	Assists McCorvey In Bowel Movements	Mallory also helps him with his bowel movements.
102		She moves McCorvey from his wheelchair onto an open commode with a bucket underneath. She puts on a glove and lubricant, puts her finger up his rectum to help him have a bowel movement. This is the only way he can have a bowel movement.
	Bowel Problems	Sometimes he does have uncontrollable bowels, and has a bowel movement by accident in his pants. This is one of the reasons he does not like to go anywhere public, because he's embarrassed.
	Urination Problems	He also has a problem with urination. He does what is called "crudeting" his bladder, which is thumping on it to stimulate urination. However, sometimes he is incontinent, which just means he will urinate on himself or in bed, and this has happened quite a bit lately.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
103	Shops, Cooks And Cleans For McCorvey	Mallory does the shopping, cooking and cleaning for herself and McCorvey.
	Typical Day	A typical day depends on how McCorvey feels, because sometimes he's in so much pain he does not get out of bed in the mornings. On a good day, he'll get up and drink some juice, and either watch TV or talk on the phone. If the weather's nice, he'll go outside and sit.
104	McCorvey Hopes For Cure	She and McCorvey do hope that a cure will be found. This is very important to him, and this is the hope that keeps him hanging on.
105	Mallory Has Cared For McCorvey From Day Of Accident	Mallory began taking care of Daniel from the very first day in the hospital, and she has taken care of him since.
	McCorvey Embarrassed By Catheter	His needs were different then, because they had to do pin care around the halo, they had to catheterize him because his bladder was non-functioning at this time. He was very embarrassed by having to use catheters. Catheterizing is inserting a tube into the urethra or penis, up into the bladder, so he could urinate.
106		When McCorvey first came home they had to wake him and turn him every two hours, and catheterize him every four to five hours.
	Bedsore	McCorvey has gotten bedsores, which is an open lesion.
107	Odor Like Dead Or Rotten Tissues	There is an odor associated with them, which basically smells like dead tissue and stinks rotten.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	She Give 6-7 Hours Care Daily To Daniel	Mallory believes it would be fair to say that she spends six or seven hours a day caring for McCorvey. She is familiar with the term spasticity, which is basically a muscle spasm.
108	Has Violent Spasms	She has witnessed Daniel having these spasms. This happens a lot at night. He will jerk, especially in the lower legs and upper legs, and it's just a twitching. It can be violent, and is similar to a seizure.
	McCorvey In Great Pain	The physical pain McCorvey experiences you can see on his face. It's in his eyes, in the way he holds his body. There is also a great deal of emotional pain.
109	McCorvey No Longer Wishes To Live	McCorvey tells Mallory he does not want to live anymore, he's not a man anymore. He wants to have children and they don't know if that's possible. He's just lost his spirit.
	Before Accident Their Plans Were Marriage, Starting A Family And Careers	Before the accident, she and McCorvey did have plans. They were going to get married and McCorvey was going into the military. They were just going to settle down and raise a family.
	McCorvey Has No Family	McCorvey lost his mother this year, and his father has had numerous strokes and is not doing well. He is in a nursing home.
	McCorvey Adopted	Daniel is an only child, and was adopted.
110	Mallory Is McCorvey's Only Family	It would be fair to say that Mallory is the only family McCorvey has left.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
111	McCorvey Will Not Marry Her	<p>Mallory has a very strong faith and believes only the best. She and McCorvey are not married because Daniel does not want to marry her if he's in a wheelchair.</p> <p>Mallory wears an engagement ring.</p> <p><u>CROSS-EXAMINATION BY LEGRAND JOHNSON:</u></p>
112	Taking Care of McCorvey Stressful And Difficult. No Way To Imagine What Their Life Together Is Like	<p>Mallory and McCorvey's relationship is very stressful. They both get frustrated, especially McCorvey. Unless you're in that situation, you can never imagine what it would be like to live with someone like McCorvey. Mallory believes it is the most difficult thing she's ever been through in her life.</p>

SUMMARY OF TRIAL TRANSCRIPT FOR NOVEMBER 15, 1990 (R.3003)

TESTIMONY OF DANIEL McCORVEY

<u>Page</u>	<u>Issue</u>	<u>Description</u>
3		<u>DIRECT EXAMINATION BY McCORVEY:</u> Daniel Bush McCorvey lives at 742 South 1100 East in Salt Lake City, Utah.
5	Paralyzed	McCorvey has been paralyzed since August 7, 1986.
	Now Takes Opiate Drugs For Pain	He is taking a drug called hyphen which is a synthetic opiate. This drug can pass through what doctors call the blood "brain barrier" which is the central nervous system and kill pain.
6	Constant Pain Like Being Set Ablaze With Kerosene	McCorvey took this drug today to control a pain that feels like someone put kerosene on McCorvey and lit a match. He has pain in his rectum. He does hurt at this time.
7	Paresthesia	McCorvey has pain constantly. The pain in his rectum feels as if he's being stretched and torn. He has what they call paresthesia which is a signal being received from the brain indicating that there is a problem with the nerve.
	Dysreflexia	Dysreflexia is a condition where your blood pressure goes down, your pulse gets shallow, you get cool sweats and nauseated. This condition indicates the possibility that someone's bladder needs to be emptied, they need to take a bowel movement or possibly they are sitting on a ball point pen for instance.
8	Suffers From Dysreflexia	McCorvey does suffer from dysreflexia.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Dysreflexia Causes McCorvey To Drift In And Out Of Shock In Courtroom	This condition also produces symptoms similar to shock. McCorvey drifts in and out of that condition everyday. McCorvey has experienced this condition while in the courtroom. When he is in this condition he loses control of his bowels. He also loses control of his bladder.
9	Urinated And Defecated On Him- self In Courtroom	Both of those things have happened to him while sitting in this courtroom during this trial.
	Honda Civic	The car McCorvey was driving on the day of the accident was a 1986 Honda CRX Civic.
10	No Drugs/Alcohol On Day Of Accident	McCorvey had not been drinking on the day of the accident nor had he taken any drugs.
13	First Construction Area At Top Of Hill	Prior to McCorvey reaching the accident scene, he went through a construction area. This was at the top of the hill going down towards the rest area.
14	Passed Safely Through First Con- struction Area	McCorvey got through the first construction area, which was signed well and controlled well, just fine.
15	Good Road After First Construction Area. Everyone Back Up To Speed	After this McCorvey was under the impression that they were coming to the end of the construction area. There did seem to be a negligible amount of chips on the road, but everyone including McCorvey started to speed up.
16	Saw No Early Warners	McCorvey is referred to Exhibit 3ex which is a photograph of an early warner in the road. McCorvey does not remember seeing that sign. He did see a black on white 55 mph sign.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
17	Left First Construction Area Good Driving Condition McCorvey In Left Lane	Beginning at the top of the hill, McCorvey states as they left the end of the construction area, there was a feathering of chips but gradually decreased until finally the road was in good driving condition. The only thing absent on the road was some sort of delineator between the left and right lanes. McCorvey stayed in the left lane but there was traffic in the right lane also.
18	Wright in Right Lane	Mr. Wright was traveling in the right lane behind McCorvey. McCorvey saw him in his rear view mirror. He was behind McCorvey quite a distance.
19	Came Upon Thick Gravel At 55 MPH. No Signs	As McCorvey drove along the left lane at 55 mph he came upon a thick gravel. There were no signs.
20	Wright Passes. Showers McCorvey With Gravel	At this point Mr. Wright's vehicle came up behind McCorvey's vehicle. Mr. Wright's vehicle then began to pass McCorvey. As he did this he showered McCorvey's vehicle with an incredible amount of gravel.
21	McCorvey Machine Gunned By Gravel	This was described during McCorvey's deposition as like being sprayed by a machine gun.
22	Car Started Fish-tailing, Could Not Control Car	The next thing McCorvey remembers is the car going to the right. McCorvey tried to turn to the left, but the car seemed to do what it wanted. He felt as if he were in gravel intermittently. He could feel the car fishtail but was stuck in the left lane and could not get over into the right lane.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
23	Hit Big Lump Of Gravel. Lost Control Windshield Broken By Gravel. McCorvey Left Roadway. All Happened In Less Than Two Seconds.	McCorvey remembers fishtailing once to the left and then going to the right and then again to the left. He thought he had the car under control and backed off the gas a little bit. Next he hit a big clump of gravel and the car peeled to the right. Mr. Wright sprayed McCorvey with gravel which broke McCorvey's windshield. At this point the car left the road and became completely uncontrollable. McCorvey states all of these events happened in approximately 1 and 1/2 seconds.
36	Gravel All Over Road Angry Because No One Was There To Control Road.	McCorvey indicates the debris was in the middle, in the traveling area and on the sides of the road. There was enough gravel to make McCorvey angry because it was an unusual amount and the road was not blocked off. He wondered why there was no one in charge and things were not under control.
37	Does Not Remember Leaving Road	McCorvey does not remember leaving the road but remembers a brief moment while he was in the median. He remembers looking over his shoulder and seeing an emergency vehicle trying to get into the median and people screaming. Then he blacked out.
38		McCorvey regained consciousness 3 or 4 days later at LDS Hospital in Salt Lake City. He was there for 2 weeks.
39		McCorvey remembers they elected not to give him surgery at first but placed a halo on his head.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
40	Halo Brace Placed On McCorvey's Head	<p>A halo is a metal device that fits around a person's head. It is kept in place by drilling into the forehead. The whole mechanism is attached to a device that fits over the shoulders so that the person cannot move.</p> <p>McCorvey was in this halo for approximately 3 months.</p>
41	Halo Bolted Into Skull With Craftsman Screwdriver	<p>The halo was bolted or screwed into McCorvey's skull. Judith Gooch, was one of McCorvey's physicians, removed the halo by unscrewing the screws. She actually used a craftsman flat edged screwdriver.</p>
42	Halo Screwed Into McCorvey's Brain And He Cried As He Felt Skull Cracking	<p>The doctor actually turned the screw the wrong way to begin with and was putting the screw back into McCorvey's brain. McCorvey remembers after one was removed the brace seemed to be out of kilter and he could feel his skull cracking and the bolt giving way because there was no more support on one side. He had a nervous breakdown and cried for approximately 4 hours afterwards.</p>
44	Hospitalized at U of U Medical Center Rehab For 3 Months	<p>McCorvey was taken from LDS Hospital by ground to University of Utah Medical Center, Department of Rehabilitation. McCorvey believes he was there for approximately 3 months.</p>
	Hospitalized At San Bernardino Hospital For Two Months	<p>He was again hospitalized as an outpatient at the University of Utah Hospital. He was readmitted to Robert H. Ballard Rehabilitation Facility at San Bernardino Community Hospital in San Bernardino, California.</p>
45		<p>He was there for 2 months.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
48	Employed As Aircraft Mechanic	At the time of the accident McCorvey was employed by Rocky Mountain Helicopters in Provo, Utah. He was their mechanic in the heavy lift division.
51	Had Pilot's License Planned To Make Military His Career; Wanted To Be A Pilot	At the time of his accident he did have a pilot's license for a single engine land. He was at a point where he had all the hours necessary to get a multi-engine land license also. All that remained was a check ride in order for him to obtain his commercial multi-engine license. McCorvey's plans on August 7, 1986 were to go into the United States Army on October 15, 1986 and learn to fly a military helicopter. He was going into the warrant officer program and intended to make the military his career.
55	Judy Mallory Takes Care Of McCorvey But He Will Not Marry Her	Miss Mallory is McCorvey's friend. She takes care of him and lives with him. Before the accident they intended to raise a family but are not married at this time because he does not want her to inherit his problems.
56	McCorvey Needs Mallory's Assistance To Bathe And Go To Bathroom	Miss Mallory assists McCorvey in the bathroom by helping him bathe and go to the bathroom.
58	People Treat Him Different	McCorvey has seen people react differently to him because he's in a wheelchair.
61	Suffers From Paranoia And Depression	Besides being paralyzed in the accident, Daniel also lost the toe on his left foot. He has suffered psychological problems such as paranoia and depression.
62	Suicidal	He is also suicidal.

Page

Issue

Description

CROSS EXAMINATION BY UDOT:

	Two Construction Areas. First At Top Of Hill Near Rest Area	There were two construction areas, one being well separated from the other. At one site there were no construction people or equipment or signs. The first area was on the top back side of the hill and they were putting some material on the road. He believes there was approximately 4 miles involved in the first area.
65-66	Second Construction Area 3 Or 4 Miles Later. Road In Be- tween Was In Good Shape	He arrived in the second construction area after a stretch of about 3 or 4 miles in-between. There was a little bit of rock on the road in that 3 or 4 mile stretch but nothing that would cause a problem with control.
67-68	55 MPH Signs On Road	McCorvey does recall there being 55 mph black on white signs in the interval period.
69-70	Lost Control Of Honda When Entered Second Construction Area	After leaving the interval or transitional area, McCorvey hit the second construction area and the car seemed to lose control. He was going about 55 mph and had gone approximately 15 yards into the second construction area when his car lost control.
71	Entered Second Con- struction Area In Left Lane Car Wanted To Turn Left	McCorvey was in the left lane when he entered the second construction area. The gravel was hitting in the wheel wells and was very loud and the car started to fishtail. McCorvey put both hands on the wheel and shifted to the next lowest gear and found himself trying to keep the car just going straight. He was turning right and the car wanted to turn left.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
72	Car Did not Respond Gravel All Around Him	Whatever input McCorvey gave the car it did not seem to respond. McCorvey could see that there was more gravel in the emergency lane and the right lane was the same so he did not want to go either way. He wanted to stay in the left lane even though there was a groove, he felt as long as he kept both wheels in the groove he could survive and come out at the other end.
73	Mounds of Gravel Scattered On Roadway Shifted Down To 40 MPH	McCorvey does remember there being clumps or mounds of gravel which made the car more sluggish. It was as if someone had dropped debris intermittently down the road. McCorvey believes he was going approximately 40 mph when he hit the material on the roadway. He shifted down to slow himself.
77	Fishtailed. Left Roadway	McCorvey does not recall after hitting this area when he went off the road. He recalls fishtailing to the left, to the right, and to the left again.
78	Hit Something In Road	The last time the car fishtailed the car hit something in the road.
<u>CROSS EXAMINATION BY LEGRAND JOHNSON:</u>		
	Does Not Recall Any Signs	McCorvey does not recall there being any signs.
89	No Signs After Rest Area	McCorvey does not recall seeing the right lane closed sign as he approached the top of the hill while he was driving south. He does not recall any other signs.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
93	Does Not Recall Early Warners	McCorvey does not recall any early warners in the outside lane with their lights on when he went down the hill.
95	No Speed Control Signs Did Not See Any Flag Person	McCorvey does not recall as he went down the hill there being a sign that said "loose gravel, prevent broken windshields, advisory speed 25 mph," and he does not assume there was a similar sign on the second one. He does not recall seeing a flag person at the exit out of the Cove Fort going south on I-15. When McCorvey first noticed Mr. Wright coming up behind him, he was very far away.
96		When McCorvey looked again and Wright was closer to him, McCorvey believes he had slowed down to the mid 40s.
98	Did Not Want Van To Pass Him	McCorvey did attempt to get into the right lane to block Wright from passing but there was no way McCorvey could get into the right lane because of the gravel conditions.
99	Became Frightened Because of Gravel Hitting Him	Mr. Wright came up on McCorvey's right alongside of him. McCorvey became very frightened because Mr. Wright was hitting him with so much gravel. He was having a hard time controlling the vehicle and Mr. Wright was starting to lose control a little.
104	Slowed Down To Let Wright Pass	Mr. Wright was making an attempt to pass McCorvey when McCorvey decided to just slow down and let him get ahead of him. He was ahead of Mr. Wright all the time until that moment.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
105	Very Frightened Because Of Being Sprayed Or Machine Gunned With Gravel	McCorvey does recall seeing Mr. Wright in front of him at a 45 degree angle. He remembers his family and the fact that he was being sprayed like a machine gun fire. The chips did blind his vision. At this point he hit some gravel, there was so much noise that he was very frightened.
116	55 MPH Too Fast	McCorvey did think that 55 mph was too fast for the driving conditions and thought everyone was going too fast.
117	Could Feel Gravel With Steering Wheel	McCorvey did not see his wheels go into the gravel but rather felt through his steering wheel and could see dust coming off the back of the car.
122	Problems With Memory Since Accident	McCorvey states he cannot recall how long he had worked at Rocky Mountain Helicopters at the time of his accident. He states he has a problem with memory and time and counsel will have to refer to his records.
123		Mr. McCorvey has a problem with his memory.
124	Some Things McCorvey Cannot Remember Anymore	This upsets him because he never had this before the injury. It bothers him to talk about it because in his business you cannot have a head injury. He states he knows he's good at what he does and he thinks clear but just has a little bit of a memory problem and some of the silliest things he cannot remember anymore.

SUMMARY OF TRIAL TRANSCRIPT FOR NOVEMBER 16, 1990 (R. 3006)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
65		<p>DAVID E. MERCHANT IS CALLED AS A WITNESS BY THE DEFENDANTS.</p> <p><u>DIRECT EXAMINATION BY BERRY LEGRAND JOHNSON:</u></p> <p>LeGrand Johnson Employee</p> <p>David Eugene Merchant lives in Richfield, Utah. He is presently a commercial truck driver, but has previously worked in road construction, in particular chip seal jobs. For the last four years, he's done seal coat or chip sealing.</p> <p>On August 7, 1986, Merchant was working for LeGrand Johnson Construction Company.</p>
66	His Duties Were To Set Up Construction Signs & Spread Chips	<p>Merchant worked 12 hours on the day of August 7, 1986. His job duties at that time were to set up road construction signs and spread chips over the road from the back of a pickup truck.</p>
73		<p><u>CROSS-EXAMINATION BY McCORVEY:</u></p>
74	Both Lanes Open At Accident Scene	<p>Referring to page 12, line 21, of Merchant's deposition, Merchant indicated that on August 7, 1986, just prior to the accident occurring, in the area where the accident occurred, both lanes were open for traffic.</p>
75	Day Of Accident Set Up Signs But Laid Them Down So Could Not Be Seen By Motorist	<p>Mr. Merchant also indicated in his deposition that on the day of the accident, he set up "Right Lane Closed" and "Right Lane Closed Ahead" signs, but then leaned them over on the side of the road so they couldn't be seen.</p>
	Remembers Fatal Accident	<p>Referring to page 20 of Merchant's deposition, he indicated that there were other accidents that occurred along the stretch of road on I-70.</p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
76	I-70 Fatal Accident Occurred When Honda Civic Struck Chips	Merchant believes there was a Honda Civic headed east on I-70 that had come off the old road onto chips and was going too fast. It went off the road and hit the side of the mountain. By that, he meant the driver went off of old chipped surface onto newly chipped surface. Merchant was told to place his early warning signs about 500 feet in front of the flagger sign.
77	Early Warner Marked On Exhibit 17 Miles From Accident Scene	The witness is asked to indicate on Exhibit 17 where the early warner was, which was miles north of accident scene.
78	UDOT Told Him Where To Place Signs	UDOT inspector, Curtis Berry, told him where to put the signs.
	Traffic Not Slowing Down	Merchant also testified during his deposition that on this project, almost all the traffic was going 50 to 55 miles per hour, and were not slowing down.
	Not Safe To Drive 55 MPH On Chips	He also testified that in his opinion, travelling too fast on newly-chipped surface was unsafe.
98		LEE BEAUMONT IS CALLED AS A WITNESS BY THE DEFENDANT. <u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u> Lee L. Beaumont lives at 37 South 400 West in Beaver, Utah. He is part-owner of Bradshaw Auto Parts in Beaver, Utah, and belongs to the Beaver Emergency Services. He is both a volunteer fireman and a volunteer emergency medical technician, or EMT.
	He Is EMT Who Treated Page	

<u>Page</u>	<u>Issue</u>	<u>Description</u>
101		Beaumont does recall being called to the scene of an accident near the Cove Fort exit of Interstate 15 on August 7, 1986.
107	Page Responded To Questions. Said Going Too Fast When Hit Gravel	Beaumont did ask Page what happened and Page Page indicated, "No. We were going too fast. We came upon traffic, tried to pass on the left, and lost control."
<u>CROSS-EXAMINATION BY McCORVEY:</u>		
		Paul Page had a visible broken arm. Broken pelvises and broken backs are not assessed at the scene.
109		Beaumont did have his deposition taken in August in this case.
110	Witness Changed Testimony	Referring to page 9, Beaumont did indicate what Paul Page said to him on line 16, which states: "I came upon some cars too fast, tried to pass on the left, lost control of my vehicle."
		Beaumont apparently did indicate that Paul said "I".
	Thought Page Was Driver	Beaumont did indicate in his deposition that he had the impression that Paul Page was the driver.
111		He had that impression based on Paul Page's answer to his question about what happened.
	Saw No Early Warning Devices At Accident Scene	Beaumont also indicated in his deposition at page 25, line 5, that looking up the highway, I-15, he did not notice any early warning devices with flasher arrows.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
113		Beaumont arrived at the scene of the accident at 4:49 p.m., and left the scene at 5:05 p.m.
115		MAX SHIELDS IS CALLED AS A WITNESS BY THE DEFENDANT. <u>DIRECT EXAMINATION BY UDOT:</u>
	Investigating Officer	Trooper Shields' name is Curtis Max Shields. He lives at 95 East First South in Kanosh. He has lived there for 31 years. Kanosh is about 15 miles south of Fillmore.
116		Trooper Shields was on duty the day of August 7, 1986.
122		Trooper Shields arrived at the scene of the accident at approximately 4:23. He believed it happened at about 4:21.
123		Trooper Shields investigated this accident.
125	Measurements Taken	Trooper Shields did take measurements when he conducted his accident investigation.
128		Trooper Shields was assisted by his sergeant, Lyle Evans.
	Supposedly Discovered Error In Measurements In May Of 1990 With Help Of UDOT Expert Witness	Trooper Shields did subsequently find an error in the measurements, which was established this past May. Newell Knight, who is a retired patrol officer, was at the scene of the accident.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
129		Trooper Shields made a 60-foot error in his initial investigation.
142		<u>CROSS-EXAMINATION BY LEGRAND JOHNSON:</u>
153		Trooper Shields does recall driving past where the road goes into the rest area just north of milepost 136.
154	Recalls Flagger By Rest Area	He does recall there being a flag person up at the summit by the rest area.
155		<u>VOIR DIRE EXAMINATION BY McCORVEY:</u>
	Notes of Accident	Referring to Exhibit 77, the notes attached to this investigation are those notes made by Shields at the time he investigated the accident. The signs referred to on that exhibit were seen after the accident.
156	Prepared Notes After Ambulance Left Accident Scene	Mr. Shields prepared Exhibit 77 during the investigation at the scene of the accident. This does refresh his recollection as to what signs were and where they were located.
157	Made Observations From Which Notes Prepared Two Hours After Accident	Shields made these observations of the signs after the injured people had been taken from the accident scene and after he had measured the accident scene. This was probably up to two hours after the accident.
169		MAX SHIELDS, HAVING BEEN PREVIOUSLY SWORN, IS EXAMINED AND TESTIFIED ON HIS OATH AS FOLLOWS:
190		<u>CROSS-EXAMINATION BY McCORVEY:</u>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
192		When he first got to the scene, his immediate response or attention was on the victims and to control the crowd.
193	Investigation Started After Victims Gone	After the victims were gone, Shields started his investigation.
	Marked Exhibit 17	Shields is referred to Exhibit 17, and asked to indicate on that exhibit the words "after" where the EMT indicates he left the scene at 5:05.
194	Does Not Remember How Deep The Gravel Was On Road	Shields' deposition was taken in this case in 1988. He did testify at that time that he did not remember how deep the rock chips were on the road.
195	But Remembers Gravel On Road	He has seen the pictures and also remembers that there was gravel on the road where the accident occurred.
196	Gravel Would Cause McCorvey To Spin Out	Shields did indicate in his deposition that the gravel would have caused McCorvey to spin out if he were accelerating.
	Drivers Had To Take Action To Avoid Gravel. Reasonable For McCorvey To Stay Ahead Or Drop Back, Worst Thing To Do Would Be To Stay Abreast Of Wright	Normally, drivers would need to take some action to avoid gravel being thrown against them by other cars. In his deposition, he did indicate that the driver's options were to either go ahead and pass, or to slow down to get away from the rocks. The worst thing to do would be to stay side-by-side if there were rocks being thrown.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
197		Plaintiff's Exhibit 77 is part of Shields' investigation of the accident. These notes were made during his investigation on August 7, 1986, some time after the boys had been taken out of the median.
198	Notes Of Investigation Show Early Warner Near Accident Scene With Advisory 25 MPH Sign	The notes were taken after Shields started his investigation. He started north from the accident scene, seven-tenths of a mile is a sign "Use Left Lane", and a direction arrow with an advisory speed 25 miles an hour.
199	Notes Made Between One And Two Hours After Accident Do Not Indicate A Second Early Warner	Shields does not say anything about a light -directing arrow there. These notes were made perhaps as late as an hour or two after the accident.
203	Returned to Scene Of Accident A Year Later With UDOT'S Expert Witnesses And LeGrand Johnson's Attorney	Shields returned to the scene of the accident approximately one year later, in November of 1987, with BERRY . He could have gone with Arthur Geurts, as well, though he can't remember the name.
204		Also with him at this time was Newell Knight. Mr. Knight is another expert witness for the defendants, and Shields knows him personally. Mr. Knight was employed by the Highway Patrol for a long time. Mr. Galloway, another expert witness, could have been with Shields at this time, as well.
205	Went To Accident Scene Again With Same People In May Of 1990	After Shields retired in May of this year, he went back to the accident scene with BERRY , OGILVIE and Mr. Newell Knight.
206		Bob Galloway was probably also there. Mr. Richard Leuttich was there.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Found Error On May 1990 Visit	It was on this visit that Shields found the 60-foot error, four years after the accident.
207	Corrections Would Cause Accident Reconstructionist To Increase Speed Of McCorvey's Vehicle	If a person were to rely upon the measurements that Shields did in the investigation, that would lead an accident reconstructionist to increase the speed of McCorvey's vehicle.
208	UDOT's Expert Helped Shields Find Error	Shields did not find the error by himself. Newell Knight helped him find it four years after the accident.
210	Prior To Accident Remembers Signs At Top Of Hill Near Rest Area Miles From Accident Scene	Shields does have a memory of signs at the top of the hill by the rest area when he drove the project at 3:30 on the day of the accident. He did not pay as much attention then as he did when he went back during his investigation, and when he went back during his investigation, he looked for what was there and marked it.
RICHARD A. LEUTTICH IS CALLED AS A WITNESS FOR THE DEFENDANT.		
<u>DIRECT EXAMINATION BY UDOT:</u>		
Richard A. Leuttich is an engineer and consultant, primarily in management consulting.		
229	Objective of UDOT Traffic Control Plan Was To Move Traffic Through Work Area In Left Lane	The intent or objective of the traffic control plan that was to move traffic into the left lane through the work area, so that they could have safe access in the junction points between the ramps and the main lane.

Trial Transcript Summary

November 16, 1990

Page -9-

(R. 3006)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	UDOT Plan Was Not A Perfect Plan	Leuttich does not maintain that the traffic control plan in use was a perfect plan. In fact, he would not have done it that way.
230	UDOT Plan Deviated From MUTCD	It did deviate from the MUTCD.
231	Primary Reason For Traffic Control Is Safety	The primary reason of traffic control is to move traffic safely. To protect drivers and also to protect the workers. In a minor way, it is also to protect the quality of the work that's being done.
<u>CROSS-EXAMINATION BY McCORVEY:</u>		
234	Only One 25 MPH Sign Used On Project	He assumed that these signs were in place in the area, and also that there were two early warners on the project. He also assumed that there was an advisory 25 mph sign which was on the second early warner.
235	Purpose Of 25 MPH Sign Was To Control Speed But UDOT Placed Sign Near End Of Project. Witness Would Not Have Done It This Way	The purpose of that sign is to control the speed between the first early warner and in the vicinity of the second early warner. UDOT put the 25 mph sign on the last early warner as you leave the project, which is not the way Leuttich would have done this project.
237	Wright's Van In Lane Adjacent To McCorvey Was Major Cause Of Accident	Referring to Leuttich's deposition, page 33, line 14, Leuttich formed an opinion as to whether or not the presence of Mr. Wright's van in the lane adjacent to Mr. McCorvey contributed to the cause of this accident. He believed it was a major causation of the accident. Based on the reading of the depositions, he believes that the two vehicles were vying for position to get ahead of each other to avoid the rocks.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
239	MUTCD Sets Out Minimum Standards	Leuttich has done a lot of work with the Manual on Uniform Traffic Control Devices. The manual itself indicates a minimum standard.
240	But Should Do More Than MUTCD Requirements When Necessary For Safety	Whenever possible, one should try to meet those minimum standards and if more is required, you
241	Leuttich Would Not Have Tried To Close The Outside Lane According To UDOT's Plan	Leuttich is asked to assume that it was the intent of the superintendent to close the outside lane. He is referred to Mr. Peterson's signing diagram, which was supposedly in place and is marked as Exhibit 35 or 36 . Leuttich states if he assumes that the intent was to close the outside lane, the signing that was in place would not have closed that lane beyond the last early warner. He would not have tried to close the lane that way.
	UDOT Plan Not Effective To Close Lane	Referring to Exhibit 37 , which is a sign plan that was in place on Interstate 15, and assuming the intent of this plan was to close the lane from the interchange between I-15 out a distance of four or five miles, with a "Road Construction Ahead" sign, a "Lane Closed" sign, and a "Loose Gravel" sign, that plan was not effective to close that lane.
245		Leuttich was asked to bring with him to his deposition everything he relied upon and considered in coming to his conclusions and opinions in this case. He was specifically asked what things he had relied upon and considered.
246	Materials Used In Preparation For Case Came From Lawyer P. K. Peterson	Among the materials Leuttich brought with him to his deposition was Exhibit 74 , which is a document prepared by lawyer P. K. Peterson, as well as Exhibits 75 and 76 .

<u>Page</u>	<u>Issue</u>	<u>Description</u>
247		All of these things were either collected or prepared by lawyer, P. K. Peterson. The date of one letter is August 18, 1986. Leuttich did consider these things and highlighted some of the things he found significant.
249	Letter From Mrs. Brian Wright	Exhibit 75 is a telephone conversation record with a Mrs. Brian Wright. Leuttich is asked to read the contents of the conversation to the jury.
	One 25 MPH Sign Not Sufficient	"I felt that there was not sufficient signs to indicate a gravel road. One small sign, '25 miles per hour', then a sign indicating 'no passing' and 'flagman'.
	No Flagmen	"There was no flag person. No one was going 25 miles per hour." Something about a Honda going 60 miles per hour. They have pits in their windshield.
	Exhibit 76 Is A Summary Of Statement From Brian Wright	Leuttich is asked to read Exhibit 76, which is a summary of a conversation stated by Mr. Brian Wright.
	No Flagmen. No Signs. Two Inches Of Gravel On Road	"Traveling 50-55 miles an hour. Noticed one sign at top of hill that said 'flagman ahead'. Right lane ends. No flagmen were in area. Down the hill there were no signs. Two-inch gravel on road. Heavy traffic. No one was obeying speed limit."
255		<u>REDIRECT EXAMINATION BY UDOT:</u>
259	"Lane Closed" Sign Has No Relevance Unless Repeated Often	A "Lane Closed" sign would not have any real relevance as far as the driving behavior goes unless the signs are repeated every so often. Then it might have some significance.

SUMMARY OF TRIAL TRANSCRIPT FOR NOVEMBER 20, 1990 (R. 3007)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
2		LYLE O. EVANS IS CALLED AS A WITNESS.
		<u>DIRECT EXAMINATION BY UDOT:</u>
		Lyle O. Evans is a sergeant in the Utah Highway Patrol. He is stationed in Fillmore, Utah.
3		Trooper Evans was notified on August 7, 1986, of this accident.
4		He was notified at 4:31 p.m.
5	Helped Investigate Accident	Trooper Evans assisted in the investigation of the accident at the scene. When he arrived there, it would have been approximately 4:58 p.m. He helped load one of the people in the ambulance, and then assisted Trooper Shields with the accident. He took some photos and held the measuring tape for him.
6		<u>CROSS-EXAMINATION BY LEGRAND JOHNSON:</u>
	Photographs Taken To Depict Conditions Of Road	Trooper Evans' purpose in taking the photographs was to fairly and accurately depict a roadway condition at the time he was taking the photos.
7	Not Concerned With Photographs Showing Thickness Of Gravel On Road	At this time, he was not concerned about the photographs showing the thickness or the amount of chips on the highway.
10		<u>CROSS-EXAMINATION BY McCORVEY:</u>
	Arrived 30 Minutes After Accident. Drove South To Accident Scene	Trooper Evans arrived at the scene approximately half an hour after the accident. He remembers going through several miles of construction sites and believes he even remembers a flagger slowing down traffic near the accident scene. This would have been a mile or a mile-and-a-half north of the accident scene.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
11	Does Not Remember Early Warner	Trooper Evans has no memory of an early warner flashing arrow device by the overpass.
12	Marked Exhibit 17	The witness is asked to indicate on Exhibit 17 with a green marker with a circle around what is indicated on the exhibit as "early warner" with his initials and the time he arrived at the accident scene. That would be 4:58. He is also asked to put a question mark next to his name.
14		ALTON STAPLES IS CALLED AS A WITNESS.
		<u>DIRECT EXAMINATION BY UDOT:</u>
16	State of Utah Shed Foreman	Staples is retired at this time. He was employed by the State of Utah for 32 years as a shed foreman at Cove Fort. A shed foreman has the responsibility for a certain section of road. His section was I-15 and I-70, both up to the top of the summit on I-70.
19	Asked by Griffin To Sweep Road	Dick Griffin had asked Staples to broom.
21	In Cove Fort Area When Accident Occurred	Staples was in the Cove Fort area when this accident occurred.
22	Griffin Asked Him To Sweep	Dick Griffin had asked Staples to sweep on this project and Staples did sweep while the project was ongoing.
29		<u>CROSS-EXAMINATION BY McCORVEY:</u>
	Not State's Job To Broom	Staples was on the job nearly every day. It was not the State's job to broom this road under the contract.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
30	Griffin Asked Staples To Help	Dick Griffin asked Staples to begin the brooming. He asked Staples, after looking at the job, to help broom.
	Broomed For Safety Of Motorists	Staples was brooming because he wanted the road safe and to protect people.
31	Contractor Falling Behind So Staples Swept Road To Protect Motorists	Staples was out there because the contractor was apparently falling behind and because he had an obligation to the travelling public.
33		<u>RECROSS-EXAMINATION BY McCORVEY:</u>
34	Speed Should Not Exceed 35 MPH On Unbroomed Road	Staples believes a driver should not, in any case, go over 35 mph on an unbroomed lane.
	Should Be More Than One Advisory Speed Sign	Staples would expect to see more than one advisory speed sign on a project the length of the one at Cove Fort. He would expect to see some near the front of the project.
35	Not Safe To Drive Unbroomed Lane At 55 MPH. Disagrees With Griffin Statement That Highway Safe At 55 MPH	Dick Griffin was one of Staples' bosses. He would disagree with Griffin if he said it was safe for motorists to drive 55 mph on the unswept lane on a fresh chip job. It is not safe.
36		DWAIN D. HOLDAWAY WAS CALLED AS A WITNESS BY THE DEFENDANT LEGRAND JOHNSON.
37		<u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Dwain D. Holdaway lives at 716 East Factory Street in Garland, Utah. He is presently employed by the Department of Transportation, and formerly worked for LeGrand Johnson Construction Company.
38	Ran Rubber-Tired Roller for LeGrand Johnson	Holdaway was employed in the month of August, 1986, by LeGrand Johnson, and was working down by Cove Fort in Southern Utah, on a chip seal job. He was running a rubber-tired roller.
44		<u>CROSS-EXAMINATION BY McCORVEY:</u>
	Now Works For UDOT	Holdaway was working for LeGrand Johnson back in August of 1986. Today, he is working for the Utah Department of Transportation.
45	Remembers One 25 MPH Sign	Holdaway indicates in his deposition he remembers a sign saying 25 miles an hour.
46		He is not sure where that sign was located, but states they are supposed to be at the first where the chipping begins. He does remember seeing one that said "25 miles an hour". That was 25 miles an hour advisory.
	Remembers Two Early Warner Signs At Crest Of Hill By Rest Area	Holdaway believes there were two early warner signs on the day of the accident.
47		Holdaway recalls seeing the early warner signs the day of the accident, because they chipped on that part of the road and then moved to the off-ramp, and Holdaway remembers going by them. He remembers them being at the crest of the hill, which is up by the rest area.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
48	Rocks Hit Holdaway Because Cars Going Too Fast	Referring to page 32 of Holdaway's deposition, Holdaway did indicate that he was annoyed with people going too fast and throwing rocks at him. He did get hit a few times by rocks, by cars usually going over 25 mph.
49	Remembers A Lot Of Rock On Road	There was a lot of rock on the road, and when traffic came by, it would pelt Holdaway with rocks, even up on the big roller. It hurt when the rocks hit him.
51		<u>RECROSS-EXAMINATION BY McCORVEY:</u>
	Marked Exhibit 17	The witness is asked to put his initials on Exhibit 17.
52		ALLEN SYDDALL IS CALLED AS A WITNESS BY DEFENDANT LEGRAND JOHNSON.
		<u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u>
		Allen Syddall lives in Richfield, Utah.
53	Flagger For LeGrand Johnson	In August of 1986, he was employed by LeGrand Johnson. At this time, he was working on Cove Fort as a flagger.
55		On the day of the accident, Syddall was flagging just down the hill from the rest area.
56	Quarter Mile North Of Accident Scene	He believes he was a quarter-mile to a half-mile north of the accident. He did see the small vehicle that was in the accident coming while he was flagging.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
57	McCorvey Passed At 50-55 MPH In Left Lane	He remembers them coming at about 50 or 55 miles per hour.
60		<u>CROSS-EXAMINATION BY McCORVEY:</u>
61		Syddall was the second flagger farthest out. In his deposition, he indicated the job of flagging is to keep people slowed down on the gravel. He does not think that 50 or 60 is the speed to drive on it. After being a flagger and having rocks sprayed all over you, anyone would probably know that.
62	50 to 60 MPH Too Fast On Unbroomed Lane	50 to 60 miles per hour is too fast on a job like this.
63	Claims He Stepped Out Into Middle Of Outside Lane To Slow McCorvey Down	Syddall did indicate in his deposition that when the little car came by, he stepped out into the middle of the lane to motion to him, because they were coming fast.
64		In his deposition at page 67, line 8, Syddall indicates that the little car was in the inside lane. He stepped about half-way into the outside lane and the little car went around him onto the inside lane.
	But Does Not Recall Van Or Semi-Trucks In Outside Lane	Syddall does not remember seeing a family van coming at him in the outside lane, or a semi. He recalls seeing diesels and cars all along there that day.
65	Marked Exhibit 17	Syddall is asked to indicate on Exhibit 17, with an X, where he was standing on the day of the accident. The witness complies.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		He is also asked to draw a dotted arrow up and draw an inside and outside lane. The witness complies.
66		He is asked to draw a stick figure for a flagman, and indicate that he's holding a flag to separate him from some of the other witnesses.
		He is then asked to indicate with his initials where he was when the car came by him.
69		<u>RE-CROSS EXAMINATION BY OLSEN:</u>
	People In Small Car Smiled And Waved	Syddall indicated when the small car came by him, they waved at him and smiled at him. They did not act like someone who thought there was danger on that road.
	Remembers One Early Warner By Rest Area	Syddall remembers seeing one of the early warners located up by the rest area. He does not recall where the other early warner was.
70	Marked Exhibit 17	The witness is asked to indicate on Exhibit 17 where he recalls the first early warner being located, and the witness complies.
71		CARLA WRIGHT IS CALLED AS A WITNESS BY THE DEFENDANT LEGRAND JOHNSON.
		<u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u>
		Carla K. Wright resides at 2512 Marsha Brook Circle, Salt Lake City, Utah.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Witnessed Accident	Mrs. Wright recalls witnessing an automobile accident on August 7, 1986. She was on her way to St. George that day with her family.
72		With her was her husband, her brother-in-law Wayne, and her sister-in-law, Charlene. They were driving a one-ton van. The van was being driven by her brother-in-law, Wayne.
73	Saw One 25 MPH Sign	Mrs. Wright does recall seeing a 25 mile per hour speed limit sign at the top of the hill.
74		She does not recall seeing any signs with lights on them. The speed limit sign was just on the side of the road.
84		<u>CROSS-EXAMINATION BY McCORVEY:</u> The witness is shown Exhibit 58 , which is an early warner, and asked if she saw one of those on the road that day.
85	Did Not See Early Warner	Mrs. Wright did not see an early warner sign that day. Referring to photograph 3EX which shows in the middle of the road an early warner sign, Mrs. Wright states she did not see an early warner sign.
	Not Racing With McCorvey	Mrs. Wright does not recall her brother-in-law racing with Mr. McCorvey.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
86		Mrs. Wright was in the van with her husband, her brother-in-law and sister-in-law, and six children. They were travelling in a caravan to California with other family members. Behind them was her sister-in-law and brother-in-law, with a daughter, her nephew and another friend were in another van.
87	Saw McCorvey Fish-tail When Hit Gravel; Go Into Median And Flip	Referring to page 14 of Mrs. Wright's deposition, Mrs. Wright indicated she did see the Honda get into the thick rocks or out of the tire marks, and then start fishtailing. It went down into the barrow pit, and instead of just letting up on the gas and coming back up, the car flipped, caught air and rolled a few times.
88		She remembers seeing the Honda hit the thick gravel and leave the road. She remembers seeing it start to fishtail.
	Remembers Rocks All Over The Road	Mrs. Wright is sure that every car was spraying rock, because there was rock all over the road. Their windshield was broken, as well as a lot of other people's, although she's not exactly sure who broke their windshield.
89	Everyone Had Their Windshields Broken	Every person in Mrs. Wright's family in the other cars had broken windshields.
	Should Have Been More Control - One 25 MPH Sign Not Enough	Again referring to Mrs. Wright's deposition at page 16, Mrs. Wright indicated there should have been a flagman to slow traffic down if it was dangerous. She felt the 25 mile an hour sign was not enough, because it was a little sign, not a normal-sized sign.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
91	Marked Exhibit 17	Referring to Exhibit 17, Mrs. Wright can indicate where she saw the 25 mile an hour sign at the top of the hill.
	Stopped After Accident	Mrs. Wright did stop at the scene of the accident and walk across the road. The gravel was deep and thick. It was deepest on the shoulder. She went over to try and help Dan McCorvey and, in fact, held a blanket for Paul Page.
	Remembers Page Screaming	She remembers Paul Page saying, "God help me."
92		The witness is asked to indicate on the exhibit her initials at the top of the hill by the rest area where she saw the 25 mile an hour sign.
93	Everyone Driving Too Fast But No One Realized	Mrs. Wright feels that everyone was driving too fast for the road conditions on that day.
94	Hazard	Mrs. Wright does not think they realized how thick the gravel was until she actually got out of the car and walked across the street. She also knew they were getting hit from the rocks.
95	Remembers McCorvey Hitting Thick Gravel	Mrs. Wright does remember the Honda drifting left and hitting thick gravel on the shoulder.
	At Accident Scene People Were Angry Because Of Damage To Their Vehicles By Rock	When they stopped at the scene of the accident, a lot of other people stopped, too. They were angry. Some people were trying to help the injured boys, and others were yelling and shouting at each other.
96	Motorists Who Stopped To Help Page And McCorvey Almost Came To Blows	They were yelling and shouting about the rock damage to their cars. They were mad and almost came to a fistfight.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		<u>RECROSS-EXAMINATION BY UDOT:</u>
97	One 25 MPH Sign -- No Flaggers	She did see the 25 mile an hour sign, but does not recollect seeing any flaggers.
100		<u>RECROSS-EXAMINATION BY McCORVEY:</u>
	Saw No Flagger And Did Not Run Over Syddall	Mrs. Wright did not run over a flagman. Shortly before the accident, her brother-in-law was in the right outside lane, and ahead of them and the Honda was a semi-truck in the outside lane.
103		CHARLENE WRIGHT IS CALLED AS A WITNESS.
		<u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u>
		Charlene Wright lives at 2606 Blake Drive. Her husband is Paul Wayne Wright.
	Family On Trip To California	In August of '86, Mrs. Charlene Wright was on a trip to California with her husband and family members.
112	Honda Fishtailed	The rear of the Honda started to fishtail back and forth a few times.
113		She did observe the Honda go off the road into the barrow pit, and then try to immediately come back out. She did not see any indication that the Honda slowed down when it got into the barrow pit.
114	Stopped At Accident Scene	She and her husband did stop at the accident, onto the shoulder of the road. They walked across the highway.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		She did notice the gravel as she walked across it.
120		<u>CROSS-EXAMINATION BY McCORVEY:</u> The witness is asked to look at Exhibit 58 , which is an early warner.
121	No Early Warner	Mrs. Charlene Wright indicates the early warner that appears in Exhibit 53 was not down that stretch of road on August 7, 1986, prior to the accident.
	They Were Not Racing	Her husband was not racing with Daniel McCorvey, nor was Daniel McCorvey racing with her husband.
	One Speed Sign Only And It Was Miles North Of Accident Scene	She did indicate during her deposition that she could recall seeing one rectangular sign with a speed on it. She didn't see more than one for sure. She recalls seeing it on the north side of the hill.
122	All Signs Were On North Side of Hill	All of the signs were on the north side of the hill.
	No Flagger	She would definitely remember if her husband had run over a flagger.
123		Referring to Charlene Wright's deposition at page 11, line 7, it states: "Do you recall seeing a little dark-colored Honda that later rolled over in an accident, before the accident occurred?" Answer: "Yes, I saw it before. "I know that it was close enough to be spraying rocks on our windshield.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		"Well, did it break a windshield or anything?"
	Windshield Broken By Honda	Answer: "In several places. The car kept going back and forth a little bit, like onto the shoulder where the bigger rocks were, the bigger gravel. It was spitting them up onto the windshield."
124		"Spitting them up, and it broke the windshield in your van then?"
		"It did."
		When she indicated off onto the shoulder, she was talking about the yard-and-a-half of asphalt before it drops off into the median. McCorvey's tire was right there or near the line where the bigger rocks were.
125		The Honda was throwing rocks; in fact, it broke their windshield in about six or seven places.
126	People Angry Much Confusion	There was quite a bit of confusion at the accident scene. People were angry about what happened to their cars.
	Gravel Deep	Charlene Wright remembers that the gravel was deep, although she did not measure it.
127	Marked Exhibit 17	The witness is asked to indicate on Exhibit 17 where she saw the speed sign and the other construction signs, with her initials and an X.
133		<u>RECROSS-EXAMINATION BY McCORVEY:</u>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
134	Early Warner North Of Rest Area Miles From Accident Scene	<p>Referring to her deposition at page 35, Mrs. Charlene Wright did indicate that the early warner with flashing lights and arrows would have been on the north side of the hill before they got to the crest of the hill.</p> <p>BRIAN WRIGHT IS CALLED AS A WITNESS.</p> <p><u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u></p> <p>Brian Wright resides at 2512 Marsha Brook Circle.</p> <p>He recalls the August 7, 1986, accident in Millard County.</p>
137	Typical Construction Signs On Right Side Of Road North Of Rest Area	<p>Mr. Wright remembers there being a "Flagman Ahead" and "Construction Ahead", or your typical construction signs on the shoulder or the right-hand side of the road going up the hill.</p>
142		<p>At one point, he came up next to the Honda, but then the semi was approximately 5 or 6 car lengths in front of the Wrights, so they kind of had to stay to the speed they were at, because there was nothing they could do at that point.</p>
144	Two to Three Inches Of Gravel On Road At Accident Scene	<p>They did get out of the car at the scene of the accident. They walked across the roadway and would describe the gravel on the roadway as being two or three inches thick, and six or seven inches on the shoulder itself.</p>
146		<p><u>CROSS-EXAMINATION BY McCORVEY:</u></p>

<u>Page</u>	<u>Issue</u>	<u>Description</u>
	Were Not Racing	Mr. Wright does not remember that his brother, Mr. Wayne Wright, and Dan McCorvey were having a road race. His brother is not the kind of man who would road race.
	Early Warner Exhibit 3ex Not There On Day Of Accident	Exhibit 3ex indicates, in the middle of the top of the hill looking down on the accident scene, an early warner sign. Mr. Wright states that sign was not there when he drove down the hill on the day of the accident.
150	Both Lanes Open--Would Have Hit Early Warner Because Drove In Outside Lane	He knows this because they would have hit it, or the semi would have hit it, because both lanes were open coming down the hill.
	No Flaggers, Signs Or Traffic Control South Of Rest Area	After they got over the crest of the hill, they did not see any other kind of flag or sign or traffic control. There was not a flagger.
	Deep Gravel At Accident Scene	He stopped at the scene of the accident to help the boys. He walked along the road to see where the car came off of the road. He walked through the deep gravel on the shoulder.
151	Should Have Been Flag- men To Control Speed	As he was walking away from the car towards where the car might have come off the road, a pickup truck pulled up with three gentlemen, who got out of the truck and asked Mr. Wright what had happened. He remembers making a comment that a flagman should have been here and this whole situation wouldn't have happened. The flagman should have been there to control the speed, because the signs were before the crest of the hill.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
152		There was nothing to control the speed over the crest of the hill, and he didn't run over any flagman anywhere near the accident scene.
	Wright Told Construction Workers That There Should Have Been Flagmen	When Mr. Wright told these men there should have been a flagman there, they left immediately.
	Angry People	There were a lot of angry people at the scene of the accident.
153		People were trying to help the boys, and yet they were angry at each other because of the damage to their cars. There was a lot of gravel thrown by Mr. McCorvey's vehicle onto Mr. Wright's van, and the van pummeled Mr. McCorvey's vehicle, as well.
	Shocked by Amount Of Gravel On Road	Mr. Wright does not recall even thinking about the gravel on the road or how deep it was until after he got out of the van. He was shocked and considered that roadway on that day to be hazardous.
	Marked Exhibit 17	The witness is asked to put his initials on exhibit 17, and the witness complies.
155		<u>RECROSS-EXAMINATION BY McCORVEY:</u>
	Did Not Appreciate Hazardous Conditions Until After Accident	Everyone before the accident occurred was driving too fast for the conditions. Mr. Wright did not really appreciate what those conditions were until after the accident happened.
		PAUL WAYNE WRIGHT IS CALLED AS A WITNESS BY THE DEFENDANT LEGRAND JOHNSON.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
156		<u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u> Paul Wayne Wright lives at 2606 Blake Drive. He is married to Charlene Wright, and Brian Wright is his brother.
158		Wayne Wright states there was a semi-tractor trailer truck in front of him as he started down the hill on the day of the accident.
159		When he first observed the truck, he does not recall which lane it was in, but at some point on the hill, he was in the right lane. At some point, he came up behind a black car.
160		Mr. Wayne Wright moved up on the Honda in the right lane, and then came up to the side of the Honda.
162	Honda Started To Fishtail	As the black car proceeded south, he moved up to the rear side of the semi, about even with the rear tires. At that point, he started to fishtail three or four times.
163	Honda Lost Control	After three or four times of fish-tailing, the car then lost control in the sense that his front end went down into the barrow pit. He went all the way into the hollow of the barrow pit.
165	Flipped	Wayne Wright did observe the car flip three or four times.
167		<u>CROSS-EXAMINATION BY McCORVEY:</u> Not Racing McCorvey Wayne Wright states he was not racing Mr. McCorvey.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Wayne Wright is referred to Exhibit 58 , which is the early warner, and then shown a photograph, which is Exhibit 3ex .
168	No Early Warner	Referring to Exhibit 3ex , Mr. Wright states when he drove that road that day, there was not an early warner where it is shown in the photograph. He is sure of this, because he was driving in that lane.
	No Flagger	There was not a flagger in that lane. When he stopped at the accident scene, a construction foreman came on the scene in a pickup truck.
169	Foreman Wanted Him To Sign Statement That McCorvey Driving Too Fast. Refused. Asked Where Were The Flaggers. Foreman Told Wright To Shut Up And Get The Hell Out Of There	This person asked Mr. Wright to sign a statement indicating that all of them were driving too fast. Mr. Wright told him he wouldn't do that. He also asked him where the flagmen were, and at that point, this gentleman was upset and indicated it was none of his business, and to get out of here.
170	Did Not Realize Hazard Until After Accident	Mr. Wright did not feel like he was driving too fast for conditions, until he got out of the car and walked across the street and realized how much gravel was on the road. At that point in time, he believes he was driving too fast. He did not have any warning before he stopped at the accident scene that the gravel was that deep on the road.
171	A Lot Of Rock And No Speed Control	There were a lot of rocks on the road, and no speed control. Mr. Wright considered the road to be hazardous that day, at the speed they were going.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		Exhibit 41 is a letter Mr. Wayne Wright wrote, dated August 3, 1987.
172	Foreman Told Wright To "Shut Up And Get Out Of Here Buddy."	In this letter, Mr. Wright relates the story about the construction man coming up and asking him to sign a statement, and in that letter, he stated: "He said shut up and get out of here, Buddy."
173	Marked Exhibit 17	The witness is asked to indicate on Exhibit 17 with his initials. The witness complies.

SUMMARY TRIAL TRANSCRIPT FOR NOVEMBER 20, 1990 - P.M. (R. 3010)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
3		ROBERT A. GALLOWAY IS SWORN AND CALLED AS A WITNESS. <u>DIRECT EXAMINATION BY UDOT:</u> Robert A. Galloway lives at 2904 Par Drive, in Bryan, TX 77802. Mr. Galloway is a <u>Professor Emeritus</u> from Texas A & M University, and operates his own consulting business in the field of highways, highway problems, design, maintenance, construction and pavement distress.
	UDOT's Chip Seal Expert	Mr. Galloway believes he has expertise in the areas of chip seal and highway materials.
26		Galloway has formed an opinion as to whether the road at the time of this accident was in a safe condition.
50		<u>CROSS-EXAMINATION BY McCORVEY:</u> Referring to Galloway's deposition, on page 43, line 22:
	Should Reduce Speed On Chip Seal Project	"And is there a period of time in which traffic should travel at a reduced speed on the asphalt?" "I think there's no doubt, based on a world of research in this area, that reducing the speed is the proper thing to do."
51		"For what period of time?" Galloway answers normally 24 hours.
52		Referring now to page 45 of Galloway's deposition, "And in your experience, how is the 25 miles per hour traffic controlled? How is speed of the traffic controlled?"

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		"Generally by signing, advisory signs."
		Question: "And how are those signs placed, in your experience?"
	Need 25 MPH Signs To Slow Traffic Placed Every 500 Feet	Answer: "Well, on a two-way -- two -lane highway -- well, they are on each side of the road, facing the traffic, and generally spaced at intervals of 500 to 1,000 feet --".
53		"And on Interstate freeway?"
		"They are placed on both sides of the lane, where there are multi-lane facilities, interstate -- I don't know of any interstate that has less than four lanes, so that would mean signs would normally be placed just off the inside shoulder and just off the outside shoulder."
	One 25 MPH Sign Not Sufficient	"And is one sign sufficient to slow speed for four miles of traffic, in your experience?"
		"For how much distance?"
		"Four miles."
		"One sign?"
		"Yes."
		"I wouldn't think so, no."
		"And would one sign be sufficient to -- one advisory speed sign of 25 be sufficient to slow traffic for eight miles?"
		"No."

<u>Page</u>	<u>Issue</u>	<u>Description</u>
		"Or fifteen miles?"
		"No."
54	25 mph Appropriate Speed For Project	In Mr. Galloway's judgment, 25 miles per hour is the appropriate speed to drive on an outside, unswept lane.
55	Should Have Been 25 MPH Signs Every 500 Feet On Each Side Of Freeway	It is Galloway's viewpoint that there should have been 25 mile per hour signs every 500 to 1,000 feet on each side of the freeway.
		NEWELL KNIGHT IS CALLED AS A WITNESS.
		<u>DIRECT EXAMINATION BY UDOT:</u>
60	UDOT Accident Reconstructionist	Mr. Knight's employment history would be as follows: He went to work for the Highway Patrol as a Deputy Trooper in 1952. He stayed with them for 2-1/2 years, worked part-time for Springville City and also the Utah County Sheriff's Dept. In 1955, he went full-time for the Sheriff's Dept., and stayed with them until 1963, when he went back to the Highway Patrol.
		Mr. Knight retired from the Highway Patrol in 1985.
95		<u>CROSS EXAMINATION BY McCORVEY:</u>
		Mr. Knight worked for the State of Utah for approximately 30 years. He was hired to be an expert in this case in 1987.

<u>Page</u>	<u>Issue</u>	<u>Description</u>
96		Mr. Knight and several other men went to the accident scene in November of 1987. He believes Mr. Shields, BERRY and OGILVIE were there with him. He cannot recall if Mr. Galloway or Mr. Leuttich were there or not. He went back again in May of 1990.
97	Knight Found Mistake In Officer Shields' Report	Going over the accident scene, Mr. Knight found there had been a mistake.
102	Witness Identifies Ridge Of Gravel On Photograph Of Road Near Where McCorvey Lost Control	Exhibit 3kx appears to have a hump of gravel in it. The witness points this out to the jury. This photograph does indicate a sort of ridge with some gravel on it. Exhibit 3lx is a better picture of the ridge.
103	50-60 MPH Too Fast For Conditions. Motorists Should Have Been Driving 30 MPH	Mr. Knight did indicate during his deposition that he thought 50 to 60 mph was too fast for this road; in fact, thought the speed should be 30 to 40 mph.
104	Unsafe At High Speeds Which Is Why Speed Limit Was 25 MPH	What was being driven was unsafe because of the rocks that would be thrown which is why the advisory speed was 25.
107	McCorvey Scared In Median. Cannot Fault Him For His Actions	Mr. Knight believes it would be fair to say that when McCorvey got down into the median he was scared to death.
109	Wright Did Not Contribute To Accident	Mr. Knight was also asked during his deposition whether or not he thought Mr. Wright contributed in any way to this accident and he indicated no.

Trial Transcript Summary
November 20, 1990 - P.M.
Page -5-
(R. 3010)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
110	Would Not Recommend That McCorvey And Wright Remain Abreast Of Each Other	Mr. Knight would not have recommended that Mr. Wright stay even with Mr. McCorvey.

JCT55.4

SUMMARY TRIAL TRANSCRIPT FOR NOVEMBER 21, 1990 (R. 3008)

<u>Page</u>	<u>Issue</u>	<u>Description</u>
14		PAUL JOHNSON IS CALLED AS A WITNESS.
15		<u>DIRECT EXAMINATION BY LEGRAND JOHNSON:</u>
	V.P. & Estimator For LeGrand Johnson	Paul Johnson is employed by LeGrand Johnson Construction and is vice president. His duties include chief of estimating and as an estimator he does become involved in looking over traffic control plans on road construction jobs.
	Required UDOT Approval To Change Traffic Control Plan	When he receives a traffic control plan from the state, he can either use their plan or if he wishes to change the construction methods, he can ask for a change and submit his own plan for their review.
16		It is UDOT's prerogative to either accept or reject that.
17		<u>REDIRECT EXAMINATION BY LEGRAND JOHNSON:</u>
	No Changes In Traffic Control Plan Without UDOT approval	He could have made changes in plan but only with UDOT's approval. UDOT must approve such changes.

Tab 24

INSTRUCTION NO. 33

A person who is suddenly and unexpectedly confronted with a peril arising from either the actual presence or the appearance of imminent danger to himself or to others is not expected nor required to use the same judgment and prudence as required of him in calmer and more deliberate moments. His duty is to exercise only the care which an ordinary prudent person would exercise in the same situation. If at that moment he does what appears to him to be the best thing to do, and if his choice and manner of action are the same as might have been followed by any ordinary prudent person under the same conditions, he does all the law requires of him, although in light of after events, it should appear that a different course would have been better and safer.

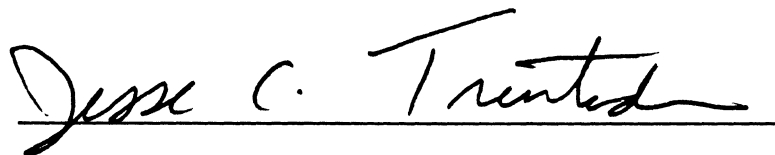
However, the presence of such an emergency or sudden peril does not constitute such an excuse or justification for negligence if the emergency or sudden peril was caused by that driver's own fault.

Tab 25

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May, 1992, I caused four (4) true and correct copies of the above and foregoing to be hand-delivered to the following:

R. Paul Van Dam, Esq.
Attorney General
Annina M. Mitchell, Esq.
Assistant Attorney General
124 State Capitol
Salt Lake City, Utah 84114

A handwritten signature in cursive script, reading "Jesse C. Trent", is written over a horizontal line.

JCT54.4